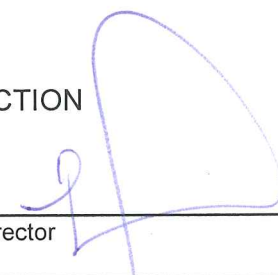


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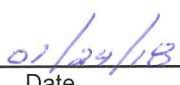
Chapter: **RECIPIENT RIGHTS**
Title: **RECIPIENT REQUESTS TO APPEAL FINDINGS**

Prior Approval Date: 1/23/17
Current Approval Date: 1/24/18

Approved by: **BOARD ACTION**



Executive Director



Date

I. Abstract

This policy establishes the standards and procedures for the Macomb County Community Mental Health (MCCMH) Board's Appeal process for complainants who wish to request an appeal of the decision/findings of a recipient rights investigation.

II. Application

This policy shall apply to directly-operated and contracted network providers of the MCCMH Board.

III. Policy

It is the policy of the MCCMH Board that the MCCMH Board's Recipient Rights Advisory Committee shall be designated as the Recipient Rights Appeals Committee for those complainants who request a review/appeal of the decision/findings of a recipient rights investigation by the MCCMH ORR.

IV. Definitions

- A. **Complainant**
The recipient or any other person who files an allegation that a recipient's right has been violated or who otherwise complains that a recipient's right has been violated.
- B. **Allegation**
An assertion of fact made by an individual that has not yet been proved or supported with evidence.

- C. Recipient Rights Appeals Committee
The MCCMH Board's Recipient Rights Advisory Committee.
- D. Appellant
The complainant, recipient (if different), guardian (if any) and parent of a minor who appeals a recipient rights complaint investigation findings or a respondent's action regarding those findings.
- E. Mediation
An informal dispute resolution process in which an impartial, individual (mediator), in a confidential setting, assists conflicting parties to reconcile their differences and reach their own settlement of issues. The mediator has no authoritative decision-making power.
- F. Respondent
A service provider that had responsibility for services at the time with respect to which an alleged rights violation complaint has been filed.
- G. Responsible Mental Health Agency (RMHA)
The hospital, center, or community mental health services program that has primary responsibility for the recipient's care or the delivery of services or supports to that recipient.

V. Standards

- A. In the summary report as issued by the MCCMH Executive Director a recipient, complainant, or the parent or guardian of a recipient shall be informed of:
 - 1. His/her right to file a written appeal with the MCCMH Board's Recipient Rights Appeals Committee within 45 days after receipt of the summary report; and
 - 2. The possible grounds for appeal, including:
 - a. The investigation findings of the MCCMH ORR are not consistent with the facts or with law, rules, policies, or guidelines;
 - b. The action(s) taken or plan of action proposed by the respondent does not provide an adequate remedy; or
 - c. An investigation was not initiated or completed on a timely basis.
- B. A member of the MCCMH Recipient Rights Appeals Committee who has a personal or professional relationship with an individual involved in a recipient rights investigation shall abstain from participating as a member of the Committee in the appeal on the findings/decision regarding the investigation of the recipient rights complaint.

- C. The MCCMH ORR shall advise the complainant that there are advocacy organizations available to assist the complainant in preparing the written appeal and shall offer to refer the complainant to those organizations.
- D. In the absence of assistance from an advocacy organization, the ORR shall assist the complainant in meeting the procedural requirements of a written appeal. The ORR shall also inform the complainant of the option of mediation.
- E. A summary report which contains a plan of action shall indicate a date the action is to be completed. The MCCMH Executive Director shall assure that the appellant and the ORR are provided written notice that the action described in the plan has been completed. If the action taken differs from the original plan, a description of that action shall be provided. The appellant may file an appeal with the MCCMH Appeals Committee within 45 days after receipt of the Summary Report, or 45 days from the mailing of a notice regarding the action that was taken when the Summary Report provided only a plan of action on the ground for appeal of a notice of action taken is that the action failed to provide adequate remedy.

VI. Procedures

- A. A written request for appeal must be submitted to the Chairperson of the Recipient Rights Appeals Committee (or designee) no later than 45 days after receipt of the summary report as issued by the MCCMH Executive Director.
- B. The MCCMH Appeals Committee shall have jurisdiction over appeals for their recipients placed for treatment in a licensed psychiatric hospital/unit.
- C. The MCCMH Appeals Committee has waived the review requirement and will accept all appeals filed by those individuals that have standing to appeal.
- D. Within 7 business days of receipt of the appeal, written notice that the appeal has been accepted. A copy of that notice shall be provided to the appellant and a copy of the appeal shall be provided to the respondent, the RMHA, and MCCMH ORR.
- E. Within 30 days after receipt of a written appeal, the Recipient Rights Appeals Committee shall meet to review the facts and findings as stated in all complaint investigation documents and shall do one of the following:
 - 1. Uphold the investigative findings of the MCCMH ORR and the action taken or plan of action proposed by the respondent;
 - 2. Remand the investigation to the MCCMH ORR for reopening or reinvestigation;
 - a. If the MCCMH Appeals Committee directs the ORR to reopen or reinvestigate the complaint. MCCMH ORR shall submit an

- investigative report within 45 calendar days of the receipt of the written decision to the MCCMH Executive Director. The 45 calendar 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 days.
- b. The Investigative and Summary reports completed as a result of the reinvestigations shall comply with all requirements listed in Chapter 7A of the Michigan Mental Health Code.
 - c. If the investigative findings result in a substantiation of a previously unsubstantiated rights violation, but the appellant disagrees with the adequacy of the action or plan of action proposed by the respondent, the appellant may file an appeal on such grounds with the MCCMH Appeals Committee. The Summary report shall contain the notice to appeal.
3. Uphold the investigation findings of the MCCMH ORR but recommend that the respondent take additional or different action to remedy the violation. The Appeals Committee shall base their determination upon any or all of the following:
- a. The action taken or proposed action did not correct or remedy the rights violation.
 - b. The action taken or proposed action was/will not be taken in a timely manner.
 - c. The action taken or proposed action did not/will not prevent a future recurrence of the violation.

Written notice of the direction for additional or different action to be taken by the respondent shall also be provided to the RMHA, if different than the respondent and the office.

If the MCCMH Appeals Committee directs the respondent to take additional or different action, the respondent shall within 30 days of receipt of the determination from the MCCMH Appeals Committee 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 (as defined above) and the RMHA if different than the respondent, and MCCMH ORR.

If the action taken by the respondent is determined by the MCCMH Appeals Committee and or the appellant still to be inadequate to remedy the rights violation, the appellant shall be informed by the MCCMH Appeals Committee of his/her right to file a complaint against the MCCMH Executive Director or the Director of the Licensed Psychiatric Hospital/Unit – as applicable.

4. Recommend to the MCCMH Board to request that an external investigation be conducted by the Michigan Department of Health and Human Services (MDHHS) ORR.
 - a. If the MCCMH Appeals Committee recommends an external investigation by MDHHS ORR, the MCCMH Board shall make that request in writing within 5 business days of the receipt of the request of the MCCMH Appeals Committee.
 - b. Within 10 days of receipt of the Investigative Report for MDHHS ORR, the MCCMH Executive Director shall issue a Summary Report. The Summary report completed as a result of the MDHHS ORR investigation and appeal notice shall comply with all requirements listed in Chapter 7A of the Michigan Mental Health Code.
 - c. The notice for appeal shall be to the MDHHS Appeals Committee.
 - d. The appellant has 45 calendar days after receipt of the Summary Report; the appellant may file a written appeal with the MDHHS Appeals Committee.
 5. If the appeal concerns the timeliness of the investigation and the Committee confirms that the investigation was not initiated or completed in a timely manner, recommend the MCCMH Executive Director address the root cause of the lack of timeliness.
- F. The MCCMH Recipient Rights Appeals Committee shall document its decision in writing. Within 10 working days after reaching its decision, it shall provide copies of the decision to the respondent, appellant, the recipient if different than the appellant, the recipient's parent(s) or guardian, if a guardian has been appointed, the MCCMH Board, and the MCCMH ORR. **The appellant's copy shall be forwarded via "Certified Mail," Return Receipt requested, and via regular U.S. Postal delivery service.** Documentation shall include justification for the decision made by the committee.
- G. The decision shall include a statement of the appellant's right to appeal to the MDHHS Level 2 Appeal, the time frame for appeal (45 days from receipt of the decision), and the grounds for the appeal. The appeal shall be based on the record established in the previous appeal, and on the allegation that the investigative findings of the local MCCMH ORR are not consistent with the facts or law, MDCH rules or guidelines, or MCCMH policies.
- H. Within 45 days after receiving written notice of the decision of the Recipient Rights Appeals Committee under VI.D., the appellant may file a written appeal with MDHHS Level 2 Appeal.
- I. If the MDHHS Level 2 Appeals instructs that additional investigation be conducted, the MCCMH Executive Director shall assure that such investigation is completed in a fair and impartial manner within 45 calendar days of his/her receipt of the written notice from MDHHS Level 2 Appeals. The 45 calendar day

time frame may be extended at MDHHS Level 2 Appeals discretion upon showing of good cause by the MCCMH Executive Director. At no time shall the time frame exceed 90 calendar days.

Within 10 business days of the receipt of the Investigative Report, the MCCMH Executive Director shall issue a Summary Report to the Appellant (as defined) and the MDHHS Level 2 Appeals.

- a. The Summary report completed as a result of the re-investigation shall comply with all requirements listed in Chapter 7A of the Michigan Mental Health Code.
- J. If the findings of the additional investigation remain the same as those appealed, the MDHHS Level 2 Appeals, shall notify the appellant (as defined) in writing of the right to seek redress through the Circuit Court.
- K. If the additional investigation result in the substantiation of a previously unsubstantiated allegation, but the appellant disagrees with the adequacy of the action taken or plan of action proposed to remedy the violation, the MDHHS Level 2 Appeals shall inform the appellant of the right to appeal to the MCCMH Appeals Committee
- L. Upon receipt of an appeal pursuant to VI.F., MDHHS shall proceed with the appeal process utilizing MCL 330.1786. The complainant shall be informed of the right to pursue injunctive and appropriate civil relief during the complaint and appeal process.
- M. At any time after the MCCMH ORR completes its investigative report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement between the parties. The mediator shall be an individual who has received training in mediation and who is not involved in any manner with the dispute or with the provision of services to the recipient.
- N. If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by the parties. The signed agreement shall be binding on both parties. Notice that an agreement has been reached shall be sent within 10 days to the MCCMH ORR and the MCCMH Executive Director.
- O. If the parties fail to reach agreement through the mediation process, the mediator shall document that fact in writing and provide a copy of the documentation to the parties, the MCCMH ORR, and the MCCMH Executive Director within 10 days after the end of the mediation process. The parties may return to the formal appeals process.
- P. If the parties engage in mediation, all appeal and response times required in Section V.A.2. and Section VI., except I. and J., are suspended during the period

of time the mediation process is taking place. The suspension of time periods begins on the day the parties agree to mediate and expires 5 days after the day the mediator provides the written documentation to the parties and the MCCMH ORR that mediation was not successful.

VII. References / Legal Authority

- A. MCL 330.1772
- B. MCL 330.1774
- C. MCL 330.1784
- D. MCL 330.1786
- E. MCL 330.1788

VIII. Exhibits

- A. None.