

June 16, 2009

Message from the Director

APD's Actions on Tier Assignments After Fair Hearing Requests Are Denied

By Jim DeBeaugrine

I would like to provide the following information to make sure that all waiver recipients, Waiver Service Coordinators, waiver recipient representatives, and other interested parties know of the actions that the Agency for Persons with Disabilities (APD) is currently taking in tier-related fair hearing request cases in which requests for hearings have been dismissed.

1. Due to concerns about having enough time for transition and to ease the effects of transition on recipients and providers, APD is delaying the enforcement of tier assignments and the necessary cost plan adjustments on people whose requests for hearing were finally dismissed because of legal insufficiency or because they did not provide required information or documents.
2. September 1, 2009, is the effective date that APD will enforce cost plan adjustments on people whose requests for fair hearing were denied by the agency. This means that the waiver recipients will be moved from "TBD" (to be determined) to the assigned tier on September 1. This will provide sufficient time for the individual to decide how to adjust their cost plan and, with the help of the Waiver Support Coordinator, for the submission of those amended cost plans to APD for processing. But, in the meantime, Waiver Support Coordinators and waiver recipients remain obligated to work to identify service changes necessary to bring their cost plans within the assigned tier cap and to advise APD of the service changes. This is critical to prepare for a smooth transition starting on September 1, 2009.
3. In order to permit prompt and orderly disposition of recently filed litigation, APD will wait until September 1, 2009, before issuing any further Final Orders dismissing (a) requests for hearing with no leave to amend the request or (b) amended requests for hearing because they are legally insufficient due to their allegations or failure to provide required information or documents. However, APD will proceed with Final Orders of Dismissal for requests for hearings in cases in which the recipient has withdrawn the request. APD also will continue to issue Final Orders following a Hearing and Recommended Order issued by the Division of Administrative Hearings (DOAH).
4. This does not in any way change the jurisdictional requirement for the timely filing of a notice of appeal in any case in which a Final Order has been issued.

Thank you for your patience and understanding in these challenging circumstances. If you have questions, please contact your APD area office.