



HIV Drug Assistance Program (HDAP) and Insurance Assistance Program (IAP) Grievance and Fair Hearing Policy

Effective Date: January 1, 2022

1. Purpose

To assure uninterrupted access to high-quality service by the HIV Drug Assistance Program (HDAP) and Insurance Assistance Program (IAP) administered by the Wisconsin HIV Program and to safeguard eligible clients against unethical, illegal, or otherwise inappropriate actions that could prevent or interrupt such access. Unless otherwise stated, in this document "HDAP" is inclusive of both the HIV Drug Assistance Program and the Insurance Assistance Program.

2. Definitions

Client: a person who is enrolled in or applying for assistance from the HDAP or IAP

Fair hearing: a process that allows someone who has been denied participation in the HDAP or IAP or who has had coverage from HDAP or IAP terminated can request a reconsideration of this decision

Grievance: an official statement of a complaint over something believed to be wrong or unfair, or expressing dissatisfaction with assistance received through the HDAP or IAP

Representative: a person who has a relationship with a client, such as a relative, friend, legal counsel, case manager, or other spokesperson, who, with the client's consent, files fair hearing request or grievance on a client's behalf

3. Clients' Rights and Responsibilities

Any person who has applied for or receives services from HDAP has the right to file a fair hearing request and/or a grievance regarding the services received from the Wisconsin HIV Program. In addition, clients can express their concerns informally by emailing DHSRWFeedback@dhs.wisconsin.gov. The HIV Program staff person who receives the informal complaint will report the complaint to the HIV care unit supervisor within three business days. If the complaint is not a request for a fair hearing or an official grievance, no other action is required.

The HDAP Grievance and Fair Hearing Policy is based on the following principles:

- Clients have the right to high-quality, respectful HIV care and support services.

- The process for requesting a fair hearing, filing a grievance, or raising concerns about client services will be straightforward and consistent.
- The fair hearing and grievance process will be thorough, transparent, timely, and respectful.
- The act of requesting a fair hearing, filing a grievance, or raising a concern about client care will not result in repercussions, interruption of services, or discrimination.
- The fair hearing and grievance procedure is without cost.
- All fair hearing requests and grievances will be thoroughly documented.

In requesting a fair hearing or filing a grievance, clients are assured that:

- There will be no repercussions from staff or volunteers of the HDAP or of the Wisconsin HIV Program.
- In the case of ongoing services, there will be no interruption or discrimination while the grievance is being considered except as outlined by normal HDAP policy in [P-01771: Wisconsin HDAP Policy Manual](#).
- Only the minimum necessary information will be collected to complete the fair hearing request and/or review of grievances.
- The HDAP has a confidential and secure process for clients to submit grievances.
- Information submitted through the grievance procedure to the HDAP or to the Wisconsin HIV Program will be kept confidential and appropriate administrative, physical, and technical safeguards will be used to prevent the disclosure of information, other than as needed to carry out services.
- There is no cost for clients to file a grievance procedure.

Fair hearing and grievance policies and procedures will be made available to all HDAP clients on the Wisconsin HIV Program website. A printed copy of the policy can be mailed to clients upon request.

All HDAP clients must be informed annually or within 30 days of changes, in writing, of their rights to express concerns informally and through the formal Fair Hearing and Grievance process.

All HDAP staff will be provided with this grievance policy and will be trained on the policy.

3.1 Who Can Request a Fair Hearing or File a Grievance

Any program participant, applicant, or their representative, who has just cause for protest, complaint, or disagreement, may request a fair hearing or file a grievance.

3.2 Timeliness of Fair Hearing Requests and Grievances

Any program participant, applicant, or their representative can make a fair hearing request or file a grievance any time within 90 days following the incident or the time the client learned of the incident. A participant, applicant, or their representative can request an extension for good cause, including but not limited to health issues, incarceration, hospitalization, or travel out of state.

If the grievant believes their grievance should be resolved immediately due to reasonable harm or death, the grievant is required to submit an explanation, known for this purpose as a "Justification

Statement.” A simple written statement explaining how the grievant has been harmed or will be harmed or die if the grievance is not resolved immediately, should be attached to [F-02925: Request for HIV Care Grievance Resolution – Wisconsin Communicable Disease Harm Reduction Section HIV Care Unit](#) when submitted.

4. Fair Hearing Requests

Clients or their representatives must submit applications and proof documents according to the timeline described in Section 4.1.9: Eligibility Period of [P-01771: Wisconsin HDAP Policy Manual](#).

Client eligibility determinations will be made within 30 days from the receipt of application. Persons found ineligible for the program shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. This information will also be documented by the HDAP staff.

As stated in the HDAP Policy Manual, clients’ HDAP coverage may end at any time due to the following:

- Mail returned with an out-of-state forwarding address
- Notification that the client has moved out of Wisconsin
- Intentionally falsifying information
- Failure to submit annual recertification with supporting documents
- Notification that the client has BadgerCare coverage (without a premium)
- Exceeding the income limit for the program
- Failure to meet any HDAP eligibility requirements

The HDAP coordinator will first handle any concern that deals with the following areas through the Fair Hearing Process:

- Denial of eligibility for participation in HDAP
- Termination of coverage from HDAP

In cases where a person is terminated from HDAP and feels they were terminated unfairly or wrongly, the client may request a review of their eligibility from the HDAP coordinator through the Fair Hearing Process.

When HDAP pursues a claim against an individual who has been improperly issued benefits, the individual will be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits that must be repaid, and of the right to a fair hearing. The individual will have 90 days to repay the funds or to set up a repayment schedule with the HDAP.

The following are *not* considered grounds for an appeal of an HDAP termination decision:

- Failure to submit annual recertification with supporting documents by the deadline (This includes cases where an application was mailed before the deadline but was received after the deadline, with normal mail service.)

- Failure to complete request from HDAP staff to submit additional documentation or corrected information by the annual recertification deadline

If the Fair Hearing Process does not resolve a grievance to the client's satisfaction, the client or their representative can file a grievance with the Wisconsin HIV Program as described in Section 5: Grievances.

4.1 Requesting a Fair Hearing

A request for a hearing is defined as any clear expression by the individual or their representative, that they desire an opportunity to present their case to a higher authority. The request for a fair hearing must be made within 90 days from the date the HDAP or IAP mails or gives the applicant or participant the notice of adverse action, unless there is good cause for an extension.

HDAP staff will inform the individual of how to request a fair hearing, and that any position or argument on behalf of the individual may be presented personally or by a representative.

The request for a fair hearing may be made orally or in writing. In the event an individual makes the request orally or through a telephone call and refuses or is not able to make the request in writing, the person receiving the call shall write up the request. The HDAP coordinator must be notified of the request as soon as possible so that the Fair Hearing Request letter may be sent to the applicant or participant.

The request for a fair hearing may be denied or dismissed if:

- The request is not received within the 90 day time limit, without good cause for extension.
- The request is withdrawn in writing by the applicant, participant, or representative.
- The applicant, participant, or representative, without good cause, fails to appear at the scheduled hearing.
- The applicant or participant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to HDAP eligibility have changed in such a way as to justify a hearing.

HDAP will provide a language or sign language interpreter for language access, or other accommodations for a disability during the fair hearing, as requested.

4.2 Fair Hearing Procedure

The HDAP coordinator shall conduct the hearing within 20 business days of receipt by the HDAP coordinator of the request for hearing.

The HDAP coordinator shall provide a written notice of the time and place for the hearing to the client or representative of the client at least 10 days before the date of the hearing.

The time and location of the hearing shall be accessible to the client, considering work and school schedules as needed.

The hearing will be canceled and not rescheduled if the client has not communicated late arrival and is late by 45 minutes.

The HDAP coordinator shall provide the client or their representative an opportunity to:

- Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
- Be assisted or represented by an attorney or representative.
- Bring witnesses.
- Advance their points without undue interference.
- Question or refute any testimony or evidence, including an opportunity to confront or cross-examine adverse witnesses.
- Submit evidence to establish all pertinent facts and circumstances in the case.

The hearing may be recorded. When doing so, all parties should be informed that the hearing is being recorded. The recording does not need to be transcribed.

A sign-in form should be used at the hearing to document who is present. Everyone in attendance should print and sign their name with their title. The form should be dated.

4.3 Rescheduling a Fair Hearing

A client or representative may reschedule a hearing date no more than twice under the following conditions:

- The HDAP coordinator may grant a first request to reschedule, if the client or their representative submits a specific request to the HDAP coordinator. The HDAP coordinator may determine a reasonable time limit for a request to reschedule the hearing, such as 24 to 48 hours.
- The HDAP coordinator may grant a second request to reschedule a hearing only for good cause. Good cause occurs when the applicant, participant, or representative cannot attend the scheduled hearing due to circumstances beyond his or her control, including but not limited to serious illness, unavailability of transportation to the hearing, or severe weather conditions.

4.4 Fair Hearing Decisions and Appeals

Decisions of the hearing official shall be based upon the application of appropriate federal law, regulations, and policy, as related to the facts of the case as established in the official hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the hearing official. HDAP shall make and retain the hearing record and make these available, for copying and inspection, to the client or representative at any reasonable time.

The decision of the HDAP coordinator shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision will become part of the record.

Within 40 calendar days of the request for a hearing, the HDAP coordinator shall issue to the parties written notification of the decision, including reasons for the decision, and notification of the participant's rights to appeal.

If the decision is in favor of the client and benefits were denied or discontinued, benefits shall begin immediately, but are not retroactive.

The client or representative may appeal a fair hearing decision to the Wisconsin HIV Program, provided that the request for appeal is made within 21 days of the date of written notification of a decision by the HDAP coordinator.

The HIV care unit supervisor shall appoint a person to review the decision who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested.

The review shall be confined to the record, and the reviewer's determination shall be based solely on whether the fair hearing decision correctly applied federal and state statutes, regulations, policies, and procedures governing the program, according to the information provided in support of the notice of action and the participant's response.

If the decision being appealed concerns termination of coverage from the HDAP, the client shall not continue to receive benefits while an appeal to the HIV Program of a decision rendered on appeal at the local level is pending.

The decision of the HDAP coordinator is binding, unless it is appealed to the HIV Program and overturned by the appointed HIV Program staff.

The HDAP shall make all hearing records and decision available for public inspection and copying; however, the names, addresses, and other identifying information of clients and other members of the public shall be kept confidential.

5. Grievances

There are three types of grievances that cannot be restricted, due to rules set by the United States (U.S.) Health Resources and Services Administration and the Wisconsin HIV Program:

- Grievances that allege denial of access to one or more funded services due to the client's inability to pay, their pre-existing condition, their non-HIV-related condition, or their past or present health condition¹
- Grievances that allege that the service provider violated its Code of Ethics or Standards of Conduct²
- Grievances in which, based on the information available at the time, there is reasonable cause to believe that a client or a group of clients is at significant risk of physical or emotional harm due to the circumstances identified in a grievance or concern³

¹ HRSA Universal Monitoring Standards, April 2013, Items A-2 and A-3, p. 2.

² HRSA Universal Monitoring Standards, April 2013, Item C-1, p. 7.

³ Wis. Admin. Code ch DHS 94.02 (14).

In addition to the three mandatory types of grievances described above, the Wisconsin HIV Program generally only considers two types of grievances related to the HDAP:

- Grievances that allege that delivery of services funded (in whole or in part) by the Wisconsin HIV Program was inconsistent with [P-01771: Wisconsin HDAP Policy Manual](#)⁴
- Grievances that allege that the HDAP have been unresponsive to a previously submitted grievance, failed to follow the HDAP grievance policy, or responded in a biased, arbitrary, capricious, retaliatory, or discriminatory manner⁵

In general, clients cannot file grievances on issues that are beyond the purview of the Wisconsin HIV Program, such as federal Ryan White HIV/AIDS Program law, regulations, or policies.

5.1 Confidentiality

The client must be informed that the grievance procedure cannot ensure confidentiality as it may require identifying all parties involved to resolve the complaint. Confidentiality will remain a priority during the grievance process and disclosure of parties involved will only happen when deemed necessary to resolve the complaint.

5.2 Documentation

The Wisconsin HIV Program will use a Grievance log to document the receipt, progress, resolution, appeal, and closing of grievances.

5.3 The Wisconsin HIV Program Grievance Process

Clients can file a grievance with the HIV Program staff verbally or in writing by contacting any member of the HIV Program staff or [emailing the HIV Program](#). Upon notification of the grievance, the Wisconsin HIV Program staff member will record the grievance information on the [F-02925: Request for HIV Care Grievance Resolution – Wisconsin HIV Program](#) form and inform the HIV care services coordinator. The Wisconsin HIV Program staff receiving the grievance should collect information pertaining to any previous attempts to resolve the complaint using informal HDAP processes.

The entire appeal process could take up to 40 calendar days to complete, as detailed below. These steps will be expedited if the grievance reasonably asserts that harm or death would occur due to delayed action.

	Minimum Timeframe after Receipt of the Grievance	Grievance Step
1	Within 5 business days	The HIV care services coordinator enters the grievance into the Grievance log and responds in writing to notify the client that the

⁴ The client grievance does not need to cite any specific Standard or contract provision; this may be implicit in the grievance, as interpreted by those familiar with the Standards and contracts. This includes allegations of breach of confidentiality, violations of Americans with Disability Act (ADA) and Culturally and Linguistically Appropriate Services (CLAS) requirements, and other universal standards.

⁵ This could also include instances where the subject of the grievance is a high-ranking staff, volunteer, or board member of the subrecipient organization.

	Minimum Timeframe after Receipt of the Grievance	Grievance Step
		grievance has been received and the client will be contacted for an initial review of the grievance. This notification will also include the timetable for attempted resolution.
2	Within 10 business days	The HIV care services coordinator (or designee) reviews the grievance and determines if it meets criteria for appeal. If it does not meet these criteria, the client will be notified in writing. This decision may be appealed by the client to the Wisconsin HIV Program in writing.
3	Within 13 business days	If the grievance meets criteria, the HIV care services coordinator contacts the HDAP coordinator and interviews all parties involved and requests all documentation related to the grievance. All documentation must be submitted by the subrecipient organization to the HIV care services coordinator within 72 hours.
4	Within 17 business days	After gathering sufficient information regarding specific persons or subrecipients and the incident or incidents referred to in the grievance, the HIV care services coordinator reviews all information and develops a resolution plan and requests HIV care unit supervisor approval.
5	Within 20 business days	The HIV care unit supervisor approves resolution plan or provides justification for not and may provide additional options to resolve the complaint.
6	Within 22 business days	The HIV care services coordinator contacts the client and discusses the resolution plan and requests client's approval or reasonable alterations. If resolution plan is agreed upon, the client and the HDAP coordinator are provided the resolution plan in writing.
7	Within 28 business days	If the HIV care services coordinator and client are unable to agree on an approved plan to resolve the grievance, the grievance is forwarded to the HIV care unit supervisor.
8	Within 40 business days	The HIV care unit supervisor makes a final determination on the grievance.

The HDAP coordinator has 15 business days from resolution plan submission postage date to provide the HIV care services coordinator justification in writing as to why the resolution plan is unreasonable and to offer an alternative resolution proposal. Within 7 days of receipt of justification, the HIV care services coordinator will contact the client and propose the HDAP coordinator's alternative resolution and request approval. If client does not accept the new proposal for resolution, the original resolution plan remains in effect. If the client accepts the new resolution proposal, the new resolution plan is enacted. The six months is not extended due to this process and the grievance is expected to be resolved by the initial six month date.

The grievance remains open for six months, after which the HIV care services coordinator (or designee) will contact the client and inquire if the situation was resolved. If the situation remains unresolved, the grievance will be re-opened and the steps of the grievance appeal process will be re-

initiated. Closure of the grievance is recorded in the grievance log by the HIV care services coordinator after Section 4 of the Request for Grievance Resolution Form is collected.

5.4 Required Documentation

Documentation of grievances and appeals is maintained for a minimum of five years from the date of resolution and must include:

- Name or client ID of the aggrieved.
- Date the grievance or appeal was filed.
- Summary statement of the reason(s) for the grievance.
- Summary statement of the significant facts of the investigation.
- Summary statement of the resolution of the grievance.
- Date of resolution.
- If appealed, all of the above information pertaining to the appeal.
- If their grievance is rejected, communication regarding the reasons.

6. References

- [Wisconsin Ryan White Standards of Care: Medical Case Management](#)
- [The Ryan White CARE Act as enacted in 2015](#) (Title XXVI of the U.S. Public Health Services Act, Part B)
- [Policy Clarification notices issued by the U.S. Health Resources and Services Administration \(HRSA\)](#)
- [HRSA Monitoring Standards \(Program, Fiscal, and Universal\)](#)