

Eli's Rehab Report

Appeals: Technical Difficulties Plague New ALJ Process

Federal watchdog takes a look at how ALJ hearings go under new rules.

Whether you're an inpatient rehab facility appealing a bunch of RAC smackdowns, or an outpatient facility fighting for those Modifier 59 (Distinct procedural service) cases, the new administrative law judge methodology may make it harder for you to make your appeals case.

ALJ hearings changed drastically when the appeals switched from the Social Security Administration to the Department of Health and Human Services in July 2005, notes a new report from the HHS Office of Inspector General. Under SSA's purview, most hearings were held in person at 141 Social Security offices throughout the nation, the OIG says in the report (OEI-02-06-00110). During the first 13 months under HHS' system, 78 percent of hearings were conducted over the phone, 12 percent over video, and just 10 percent in person.

HHS has discretion to choose which hearings to grant in person at its four Office of Medicare Hearings and Appeals (OMHA) locations in Arlington, Va., Cleveland, Miami and Irvine, Calif. It most often grants them when the appellants live close to the office or if the topic is complicated or novel. The OIG reached appellants from 225 cases for feedback. That's out of more than 6,200 cases in the time period.

What they found: OMHA steered many appellants into a phone hearing without them being aware they were entitled to a video or in-person hearing. Thirty-five percent of respondents said they were never offered a video option.

Those who did have videoconference hearings weren't as happy with them as those who had phone or in-person hearings. Only 70 percent of respondents who had video hearings were satisfied with them, compared with 95 percent of phone-hearing participants and 93 percent of in-person-hearing participants, the report says.

Nearly half of video-hearing appellants reported technical difficulties like feedback, a lag in audio communication, and poor picture quality. There were also problems with the equipment not being set up on time or shutting down too early, and with losing audio or video communication altogether.

Many Providers Want in-Person Hearings

Bottom line: About 20 percent of appellants who had phone or video hearings would have preferred an in-person hearing, the OIG found.

The OIG recommends that HHS be sure to offer videoconference options to all appellants. Despite the technical troubles, hearing participants reported that being able to see the ALJ made communication easier.

The agency also urges HHS to correct the technical and operational problems associated with the video hearings. That includes improving the ability of all hearing participants to refer to the same documents.

HHS' response: The department has already fixed many of these problems, said Chief Administrative Law Judge **Perry Rhew** in a comment letter on the OIG's report. "OMHA has implemented a comprehensive training program for ALJ support staff members ... to standardize the scheduling process and to ensure that every appellant is afforded full due process rights," Phew says in the letter.

Many of the technical kinks have been worked out with time and experience, Phew says. And OMHA undertook a software upgrade last year. "Since that time, reports of telephone and video teleconference difficulties have decreased significantly," Rhew says.



One bright spot: The appeals holdup seems to have eased a bit. About 85 percent of cases submitted under the new system were decided within 90 days. A chief reason for delays was inability to get information from appellants.

Note: The report is online at <http://www.oig.hhs.gov/oei/reports/oei-02-06-00110.pdf>.