

# WELCOME

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## When A Fair Hearing Falls Short: District Court Appeals in Medicaid Eligibility Cases

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August 20-21, 2025

New Mexico Health Care Association

STOTLER HAYES GROUP



A LAW FIRM  
EXCLUSIVELY  
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# About SHG



Our team of over 50 attorneys, paralegals, and support staff serves as part of your team.

We optimize recovery for health care providers through Medicaid, Medicare, Guardianships, Private Collections, Training, and Education.



## Meet the New Mexico Team

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## PLEASE NOTE

This information is for educational purposes only and is not intended to be taken as legal advice and does not create an attorney-client relationship.



**We encourage you to jot down your questions for the Q&A period at the conclusion of the presentation!**



## Options When Faced With An Unfavorable Hearing Decision:



**OR**





**Accepting** the Fair Hearing decision  
might be the **best option** if:

- You don't have strong facts
- You don't have solid arguments
- There are minimal benefits at stake
- Or you had gone to your Fair Hearing thinking...

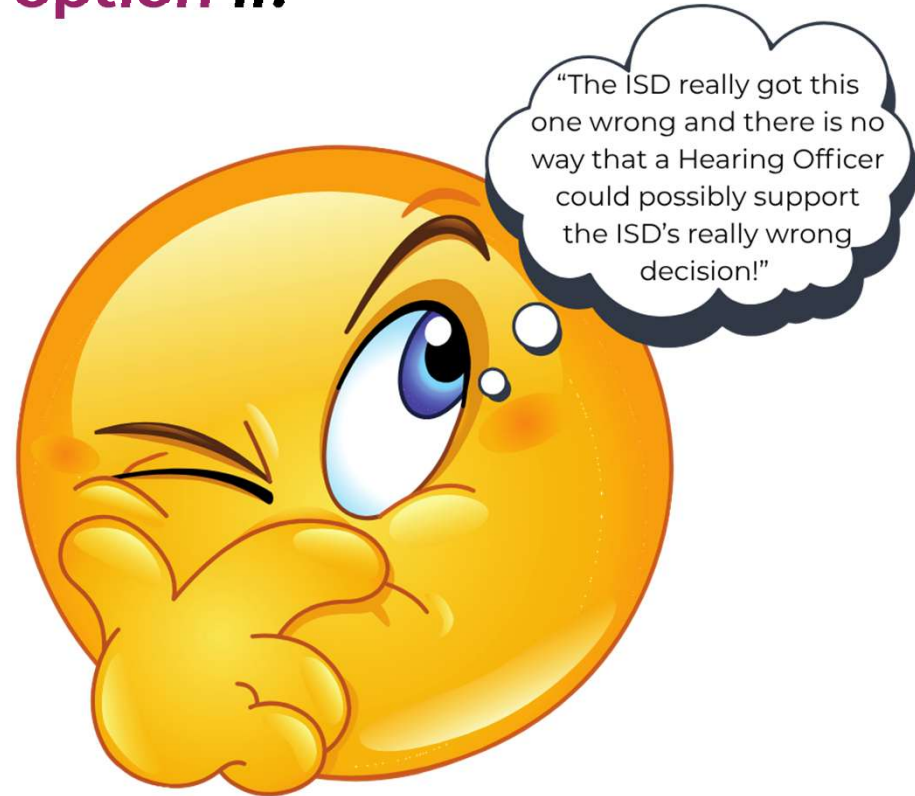






## **Appealing** the Fair Hearing decision might be the **best option** if:

- You have strong facts
- You have solid arguments
- There are lots of months of benefits at stake
- You had gone into the Fair Hearing thinking...







## **In this presentation, I will:**

- Review Best Practices for handling Applications and Fair Hearings - handling these well from the start puts you in the best possible position for a good outcome at a District Court Appeal.
- Outline the Procedure for filing a District Court appeal of a bad Fair Hearing decision while providing examples from two District Court appeals that I filed.
- Toss candy at Attendees to help them maintain focus.
- Open it up to your questions.



## Step 1:

File an **Institutional Medicaid Application** on behalf of your resident answering all questions to the best of your ability and, if there are questions you cannot answer, letting the ISD know why this is the case in the application and in a cover letter.



In short, in your Application for Medical Assistance, you are providing the ISD with notice of any challenges you anticipate.

- Letting the ISD know if there are challenges to obtaining financial information
- Letting the ISD if a resident's resources cannot be accessed
- In the case of an incapacitated resident with unknown assets or income, letting the ISD know that the resident's resources or income are "Unknown in light of Applicant's Incapacity"
- Letting the ISD know that Guardianship proceedings are underway or imminent if this is the case
- Letting the ISD know if APS is involved, especially in cases of suspected financial exploitation



## Step 2:

Receive and Respond to HUMADs and Notices



**Notify the ISD** that you are trying really, really hard to comply with its requests because under ISD's own regulations, trying really, really hard is expected and it is enough:

“An applicant...is responsible for establishing their eligibility for Medicaid. As part of this responsibility, the applicant or recipient must provide required information and documents **or take the actions necessary to establish eligibility**” NMAC 8.281.400.20.



If you can't obtain the documents the ISD is requesting, provide them with what you can.

HUMADs and notices often contain the following language:

**Trouble getting proofs? You can:**

- **Get a different kind of document**
- **Get a statement from someone who knows you**



Request assistance from the ISD.

- Under NMAC 8.100.130.8.A(2)(c), the Agency's responsibilities include the following: **“to offer and provide assistance in obtaining verification of an eligibility factor when the applicant/recipient indicates that verification may be difficult or costly to obtain”** and assistance can include, **“making telephone or written inquiries . . . requesting a document on behalf of an applicant/recipient or contacting a collateral contact.”**





- Remind the ISD of regulations that support your argument that the Applicant is eligible.
- For example, under Federal and NM regulations resources, resources to which an Applicant has **no legal access** cannot be counted.
- In turn, when a resident lacks capacity and lacks a legal agent, resources are inaccessible, thus, uncountable.



## Federal Regulations

- State Medicaid agencies can only consider income and resources that are “available” to the applicant when determining eligibility for benefits, **“taking into account only such income and resources as are . . . available to the applicant** or recipient.” 42 U.S.C. § 1396a(a)(17)(B).
- “[F]unds held in a financial institution account ... are an individual’s resource if the individual owns the account **and can use the funds for his support and maintenance**”) C.F.R. §416.1208 (a).



## The New Mexico Administrative Code

- “A “resource” is defined as cash or liquid assets and real or personal property which is owned and **can be used** either directly, or by sale and conversion, **for the applicant’s or recipient’s support or maintenance”** and “[a] liquid resource is **an asset which can readily be converted to cash**”. NMAC 8.281.500.10 (Resource Standards).
- **“A liquid resource is cash or something that can be easily converted to cash within 20 business days”**. NMAC 8.281.500.11(A) (Applicable Resource Standards).



In short, in your responses to the ISD's HUMADs and other notices you are:

- Explaining why you cannot provide them with the requested information
- Telling them what you are doing to try to obtain the requested information
- Providing them with alternate forms of verification
- Asking for help which the ISD is responsible for providing under their own regulations
- Explaining why the ISD should not be counting the resources or income for which they are requesting information



### **Step 3:**

Receive & Carefully Review the ISD's Denial & Calendar the  
Deadline to **Request a Fair Hearing**



### Examples of the ISD getting it wrong:

- An incapacitated resident is denied for Failure to Provide Bank Statements when no one has legal authority to obtain statements.
- A resident is denied for Failure to Provide Bank Statements but the resident's POA has been trying really, really hard to get those statements and the financial institution is being difficult.
- A resident is denied for having more than \$2,000 in resources when no one has legal authority to access those resources.
- A resident is denied for a specific month or months because the ISD did not correctly calculate the resident's resources for that month.



## Step 4:

File the **Fair Hearing Request** by the deadline, briefly summarizing your argument.





## Examples:

- We appeal the ISD's denial for Applicant's failure to provide financial verifications. In light of Applicant's incapacity and pending Guardianship proceedings (see attached Notice of Guardianship Hearing), no one has authority to obtain these documents. Furthermore, Applicant's resources are uncountable in light of his incapacity and lack of a legal agent.
- We appeal the ISD's denial for Applicant's being over resource. Because the Applicant's Wells Fargo account and Sunflower bank accounts are inaccessible to legal agents, these assets should not be deemed countable to the Applicant.
- For reasons explained in October 31, 2022 correspondence to ISD, a copy of which is attached without exhibits for brevity, Applicant is currently unable to access or obtain statements for his Direct Express account. As further evidence of the lengths to which Applicant and Facility have gone to obtain the requested statements and access this account, please see the Sworn Statements of the Business Office Manager and Assistant Business Office Manager, also attached hereto. In light of this, Applicant's Direct Express account is not a countable resource.



## **Step 5:**

Receive and Carefully Review the **Notice of Fair Hearing**  
and **Calendar Deadlines**



- NMAC 8.352.2.14(B)(1)(a): MAD's SOE shall be delivered to the Hearing Officer and the parties to the Fair Hearing at least 10 working days prior to the Fair Hearing.
- NMAC 8.352.2.14(D): Applicant must provide records to the ISD and the Hearing Officer at least two working days prior to the Fair Hearing.



## Step 6:

Receive and Carefully Review the ISD's **Summary of Evidence**



In reviewing the Summary of Evidence, carefully look for:

- Errors – What is WRONG
- Omissions – What is MISSING
- Instances where the ISD Highlights That You Did the Right Thing



## **Summary of Evidence Examples of the ISD Highlighting That You Did the Right Thing:**

- “On 7/22/24 two written statements were provided to the ISD reporting the difficulty obtaining the pension information.”
- “On 9/21/22, Caseworker spoke with the facility and was told the Applicant did not know who he banked with and the facility was working on Guardianship for him. On 9/22/22, an application for Guardianship was provided to ISD.”



## **Step 7:**

Respond in Writing to the Summary of Evidence (to FHB/Hearing Officer and the ISD) **Prior to the Deadline**





**NMAC 8.352.2.14(D): Applicant must provide records to the ISD and the Hearing Officer at least two working days prior to the Fair Hearing.**

- Correct Errors (What was WRONG in the SOE) and attach supporting documents
- Correct Omissions (What was MISSING in the SOE) and attach supporting documents
- Reiterate Your Argument



## Step 8:

Prepare for the Fair Hearing, by which I mean,  
**DO NOT WING IT!**





## Step 9:

Appear at the Fair Hearing



## Returning to the SOE Example of the ISD Emphasizing that the Facility Was Doing the Right Thing:

“On 9/21/22, Caseworker spoke with the facility and was told the Applicant did not know who he banked with and the facility was working on Guardianship for him. On 9/22/22, an application for Guardianship was provided to ISD.”

### **Example of how this might be helpful in the context of a Fair Hearing:**

**Me to Caseworker:** Per the ISD’s Summary of Evidence, on 9/21/22 the facility provided the ISD with notice that the resident did not know where he banked and that Guardianship proceedings would be initiated. Is this correct?

**Caseworker:** Yes.

**Me:** Also, per the ISD’s Summary of Evidence, on 9/22/22 the facility provided the ISD with paperwork showing that Guardianship proceedings were underway. Is that correct?

**Caseworker:** Yes.

**Me:** So, to confirm, the ISD had notice that the Applicant was incapacitated and that Guardianship proceedings were underway, and yet the ISD proceeded to count resources which, under its own regulations, are uncountable. Is this correct?



An actual Transcript example of the Hearing Officer/Administrative Law Judge (“ALJ”) questioning the ISD Caseworker based on documents and arguments I filed prior to the fair hearing:

**ALJ to the ISD Caseworker:** Did you look at eligibility for the months in question?

**ISD Caseworker:** Oh – oh, when we got the – so – so when we received the proof of the pension in July, it was already past the HUMAD due date.

**ALJ:** So you have not looked at eligibility for those months?

**ISD Caseworker:** So the ...

**ALJ:** This is a yes or no question.

**ISD Caseworker:** No. No. Yes. Oh, okay. I’m sorry. No, no, we haven’t

**ALJ:** Okay. So you haven’t looked at her eligibility for those months?

**ISD Caseworker:** No.



## Direct quotes from Fair Hearing transcripts:



Other phrases you will catch in a Fair Hearing: You know.....Okay.....I mean.....



## Step 10:

At the **Conclusion of the Fair Hearing**, calendar the deadline by which a decision must issue and be mindful of that date because that date determines your deadline to appeal to the District Court if the Decision is not good



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The Fair Hearing decision shall be issued to the claimant and the authorized representative **within 90 days from the date of the appeal request**. NMAC 8.100.970.9(B)(2)(e).



## Step 11:

Receive the Fair Hearing Decision, immediately calendar the deadline by which you must appeal the Decision to the District Court if you decide to go that route, and carefully review the Decision and the Hearing Officer's Recommendation to figure out **what it actually says**



Under the [NMAC 8.352.2.20\(B\)](#), a claimant or the claimant's authorized representative must appeal the HCA administrative hearing final decision within 30 calendar days of the date of the HCA administrative hearing final decision.

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# LET'S REVIEW

- Step 1:** File an Institutional Medicaid Application
- Step 2:** Receive and Respond to HUMADs and Notices
- Step 3:** Receive & Review the ISD's
- Step 4:** File the Fair Hearing Request
- Step 5:** Receive and Review the Notice of Fair Hearing
- Step 6:** Receive and Review the ISD's Summary of Evidence
- Step 7:** Respond in Writing to the Summary of Evidence
- Step 8:** Prepare for the Fair Hearing
- Step 9:** Appear at the Fair Hearing
- Step 10:** Calendar the deadline by which a decision must issue
- Step 11:** Receive & Review the Fair Hearing Decision



## **Format of the Fair Hearing Decision:**

- The Hearing Decision Letter from the MAD Deputy Director, which will be brief, followed by
- The Recommendation of the Administrative Law Judge, which will be extensive. At the beginning of the Recommendation the ALJ will indicate whether they find in favor of the Claimant (Yay!) or the Department (sigh)



## BUT...

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The HCA Hearing Decision does not need to follow the ALJ's Recommendation.

Example:

Recommendations of the ALJ: "I recommend in favor of the Claimant" (Yay!) followed by 16 pages of facts and arguments and statutes and regulations and case law in support of his recommendation.

Summary of the ALJ's Conclusion:

- The Authority did not take steps to establish eligibility under the first Application even when the Authority had all the requested information
- The ALJ found the testimony of the Authority's representative to be inconsistent, as he was confused on important dates, when documents were submitted, and who they were submitted by.
- Some information given by the Authority did not match evidence in the fair hearing exhibits.
- The Authority has not met its burden of proof in this matter.

Hearing Decision Letter: "I adopt and incorporate the ALJ's finding of fact. I also adopt the ALJ's conclusion but do not concur with the ALJ's recommendation."

**WHAT?!?!?!?!?**



## **Summary of the case that accompanied that preceded that Hearing Decision:**

### **The Issue:**

The POA could not obtain a pension statement from the pension company and the Application was denied for failure to provide verifications. A later Application was filed and approved, once a pension statement was obtained, but benefits did not go back as far as needed AND the ISD incorrectly denied benefits for one month for being over-resource when the Applicant met the resource requirement during that month.



## **Deciding Whether or Not to File a District Court Appeal**

Under the NMAC 8.352.2.20(C), the District Court may set aside the Hearing Decision if it finds the decision is:

- (1) arbitrary, capricious, or an abuse of discretion;
- (2) is not supported by substantial evidence in the record as a whole; or
- (3) is otherwise not in accordance with the applicable law, statutes, or rules.





## BUT...

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### WE:

- Had notified the ISD that the POA, the facility, and our firm were having difficulty getting the pension statement.
- Had asked the ISD to assist with obtaining this from the pension company.
- Had provided the ISD with alternate proof of pension amount.
- Kept trying to obtain the pension statement.

### ISD:

- Had failed to process the Application for more than 90 days.
- Issued confusing HUMADs with deadlines to return documents before the date the notice issued.
- Had disregarded our requests for assistance.
- Had disregarded the alternate proof we had provided.
- Had miscalculated the Applicant's resources and denied her benefits for a month she was eligible.

**With these facts, requesting a Fair Hearing was an easy decision.**



## We Appeared at the Fair Hearing

**We obtained the Hearing Decision** which included the ALJ's recommendation in favor of the Claimant followed by 16 pages of facts and arguments and statutes and regulations and case law in support of his recommendation, **but the Hearing Decision did not concur with the ALJ's recommendation!** *WHAT?!?!?!?!?*

With these facts, filing a District Court appeal of the Fair Hearing Decision was an easy decision.



## Is the Hearing Decision Arbitrary or Capricious?

“Arbitrary and capricious action by administrative agency is evident ‘when it can be said that such action is **unreasonable** or **does not have a rational basis**’ and ‘is the result of an **unconsidered**, wilful and **irrational** choice of conduct . . . ” Garcia v. N.M. Human Servs. Dep’t, 1979-NMCA-071, 94 N.M. 178, 608 P.2d 154

An appropriate knee-jerk response when faced with a Hearing Decision that is arbitrary and capricious:

*Huh?!? That doesn’t make sense AT ALL!!!*





**Is the Hearing Decision not supported  
by substantial evidence in the record?**

The Hearing Decision is not consistent with the facts of the case.

The HCA arrived at a wrong conclusion.

An appropriate knee-jerk response when faced with a Hearing Decision that is not supported by substantial evidence in the record:

*What?!? They got that totally wrong!!!*





## Is the Hearing Decision not in accordance with applicable law, statutes or rules?

**“An administrative agency is bound by its own regulations.”** Princeton Place v. N.M. Human Servs. Dep’t, 2022-NMSC-005, ¶ 36, 503 P.3d 319, citing Narvaez v. N.M. Dep’t of Workforce Sols., 2103-NMCA-079, ¶ 15, [306 P.3d 513](#).

Is the Hearing Decision and were the ISD actions leading up to that Decision, in accordance with the New Mexico Administrative Code.

An appropriate knee-jerk response when faced with a Hearing Decision that is not in accordance with applicable law, statutes or rules:

*Are you kidding me?!?  
They’re not following THEIR OWN RULES!!!*





**If, after reviewing the Hearing Decision and the ALJ's Recommendation, you believe that the Hearing Decision is:**

- (1) arbitrary, capricious, or an abuse of discretion;
- (2) is not supported by substantial evidence in the record as a whole; or
- (3) is otherwise not in accordance with the applicable law, statutes or rules.

You can appeal the Hearing Decision to the First Judicial District Court following the steps outlined in the New Mexico Rules Annotated (NMRA) which outline the rules for NM Courts.

Under NMSA § 39-3-1.1., you can appeal the Hearing Decision to the First Judicial District Court following the steps outlined in the New Mexico Rules Annotated (NMRA).



## **Who can file a District Court Appeal of an adverse Fair Hearing Decision?**

- The Applicant
- Counsel for the Applicant
- Counsel for the Applicant's Authorized Representative



## **Summary of a District Court Appeal of a Fair Hearing Decision**

1. The party appealing (the Appellant) notifies the Court and HCA that it disagrees with the decision
2. The HCA provides the Court and the Appellant with a copy of the Record on Appeal
3. The Appellant files a Statement of Appellate Issues
4. The HCA responds
5. The Appellant can respond
6. Either Party Can Request Oral Arguments and, if not,
7. The District Court Judge issues a Decision





**District Court Appeal - Step 0 – Contact the HCA to discuss arrangements for the preparation of the HCA’s record of the proceedings. NMRA 1-074(F)(2)**

**District Court Appeal - Step 1 – File the Notice of Appeal in District Court within 30 days.**

Under the NMAC 8.352.2.20(B), a claimant or the claimant’s authorized representative must appeal the HCA administrative hearing final decision within 30 calendar days of the date of the HCA administrative hearing final decision.

Under NMRA 1-074(C) and (D) the Notice of Appeal must:

- Name the parties
- Name the attorneys
- Indicate that you are challenging the Hearing Decision

**District Court Appeal - Step 2 – Within 30 days, the HCA Files, and The Appealing Party Receives, the Record on Appeal. NMRA 1-074(C)**



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**District Court Appeal - Step 3 – Within 30 days of Receiving the HCA's Record on Appeal, the Appealing Party Files its Statement of Appellate Issues.** NMRA 1-074(J)

Under NMRA 1-074(K), **the Statement of Appellate Issues must include:**

1. A Statement of the Issues (Issues = Where the ISD/HCA erred)
2. A Summary of the Proceedings (The Facts, A timeline, pointing to the HCA's record in support of each, and pointing to each fact that is critical to your arguments)
3. An Argument Regarding Each of the Issues which references the regulations, the statutes, NM case law to demonstrate how the agency's decision was either one, or two or, better yet, **ALL of the following:**
  - arbitrary, capricious, or an abuse of discretion;
  - is not supported by substantial evidence in the record as a whole; or
  - is otherwise not in accordance with the applicable law, statutes or rules.
4. A statement of the precise relief sought. ("Appellant requests that the Hearing Decision be reversed and that benefits be approved from March 1, 2024 through May 31, 2024.")

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## **Arguments Illustrating that the Hearing Decision was Not in Accordance with Applicable Law, Statutes or Rules**

*Are you kidding me?!?*

*They're not following THEIR OWN RULES!!!*



### Example 1 (Not in Accordance with Applicable Law, Statutes or Rules)

The Application was filed on January 31, 2024, but the ISD did not process the Application until May 2024.

Under NMAC 8.281.600.10, “applications must be acted upon and notice of approval, denial, or delay sent out within 45 days from the date of registration.”

ISD Caseworker during the Fair Hearing: The ISD had not “looked at” the January Application until May, and he thinks that the application was processed within acceptable timelines.

**“An administrative agency is bound by its own regulations.”** Princeton Place v. N.M. Human Servs. Dep’t, 2022-NMSC-005, ¶ 36, 503 P.3d 319, citing Narvaez v. N.M. Dep’t of Workforce Sols., 2103-NMCA-079, ¶ 15, [306 P.3d 513](#).



### Example 2 (Not in Accordance with Applicable Law, Statutes or Rules)

When it was unable to obtain pension information, the Applicant requested assistance from the ISD and the ISD did not provide this.

Under NMAC 8.100.130.8.A(2)(c), the Agency's responsibilities include the following: "to offer and provide assistance in obtaining verification of an eligibility factor when the applicant/recipient indicates that verification may be difficult or costly to obtain" and assistance can include, "making telephone or written inquiries . . . requesting a document on behalf of an applicant/recipient or contacting a collateral contact."

**"An administrative agency is bound by its own regulations."** Princeton Place v. N.M. Human Servs. Dep't, 2022-NMSC-005, ¶ 36, 503 P.3d 319, citing Narvaez v. N.M. Dep't of Workforce Sols., 2103-NMCA-079, ¶ 15, [306 P.3d 513](#).



Example 3 (Not in Accordance with Applicable Law, Statutes or Rules)

The Applicant, through her POA, the facility, its counsel, provided alternate verifications when the specific verification requested (the pension statement) proved impossible to obtain, and the ISD disregarded them and issued a denial.

Under NMAC 8.281.400.20, “An applicant...is responsible for establishing their eligibility for Medicaid. As part of this responsibility, the applicant or recipient must provide required information and documents or take the actions necessary to establish eligibility.”

AND

Under NMAC 8.100.130.8(B) (Failure to provide verification) “An applicant/recipient cannot be considered eligible for assistance until necessary verification is obtained. To the extent possible, ISD shall make eligibility determinations based on verified eligibility issues rather than failure to provide information.”

**“An administrative agency is bound by its own regulations.”** Princeton Place v. N.M. Human Servs. Dep’t, 2022-NMSC-005, ¶ 36, 503 P.3d 319, citing Narvaez v. N.M. Dep’t of Workforce Sols., 2103-NMCA-079, ¶ 15, 306 P.3d 513.



#### Example 4 (Not in Accordance with Applicable Law, Statutes or Rules)

The ISD did not provide its Summary of Evidence 10 days prior to the Fair Hearing.

Under NMAC 8.352.2.14(B)(1)(a): MAD's SOE shall be delivered to the Hearing Officer and the parties to the Fair Hearing at least 10 working days prior to the Fair Hearing.

**“An administrative agency is bound by its own regulations.”** Princeton Place v. N.M. Human Servs. Dep't, 2022-NMSC-005, ¶ 36, 503 P.3d 319, citing Narvaez v. N.M. Dep't of Workforce Sols., 2103-NMCA-079, ¶ 15, [306 P.3d 513](#).





Example 5 (Not in Accordance with Applicable Law, Statutes or Rules)

The ISD issued notices which contained confusing errors:

A HUMAD which included two different due dates both of which were prior to the date the notice issued!

A HUMAD requesting information with no clear deadline to provide same.

A “Notice of Extension” which did not include a new extended deadline for provision of document.

Per the ALJ, the denial notice did not include “a clear statement of the specific reasons supporting the [denial]” as required under 42 CFR § 431.210(b).

Per the ALJ in his Recommendation to the HCA, the ISD issued notices which were “flawed” and “defective”.

**“An administrative agency is bound by its own regulations.”** Princeton Place v. N.M. Human Servs. Dep’t, 2022-NMSC-005, ¶ 36, 503 P.3d 319, citing Narvaez v. N.M. Dep’t of Workforce Sols., 2103-NMCA-079, ¶ 15, [306 P.3d 513](#).



## Arguments Illustrating that the Hearing Decision was Not Supported by Substantial Evidence

*What?!? They got that totally wrong!!!*

### Example 1 (Not Support by Substantial Evidence)

The ISD claimed that the first Application was filed on February 1<sup>st</sup>, but, per the facility fax confirmation, it was filed on January 30<sup>th</sup>.

In his Recommendation, the Administrative Law Judge described the Agency's general confusion regarding important dates, including the original application date.

### Example 2 (Not Support by Substantial Evidence)

The ISD issued a denial for a month that the Applicant was clearly eligibility because it had not calculated her resources and income correctly for that month.



## **Arguments Illustrating that the Hearing Decision was Arbitrary and Capricious**

*Huh?!? That doesn't make sense AT ALL!!!*

### **In the ALJ's Recommendation to the HCA:**

The Agency had not met the burden of proof and that, in turn, under NMAC 8.100.970.13.B(1), “the ALJ must recommend in favor of the claimant when the adverse action taken by the department is not supported by a preponderance of the evidence available, as a result of the fair hearing.”

“[R]egardless of whether the original caseworker had access to the evidence, a hearing officer should consider new evidence that tends to establish eligibility at the time of the original denial,” a conclusion “guided by the principles” established in Landavazo v. N.M. Human Servs. Dep’t, 1988-NMCA-002, 106 N.M. 715, 749 P.2d 538 and Carter v. N.M. Human Servs. Dep’t, 2009-NMCA-063, 146 N.M. 422, 211 P.3d 219.



So, the ALJ's Recommendation was 100% in favor of the Applicant BUT the Hearing Decision was not consistent with the ALJ's Recommendation and, in particular, the HCA's Hearing Decision stated:

- I agree with all of the ALJ's finding of fact
- I adopt the ALJ's conclusion

**BUT**

- I do not concur with the ALJ's recommendation in favor of the Applicant.

*Huh?!? That doesn't make sense AT ALL!!!*



“Arbitrary and capricious action by administrative agency is evident ‘**when it can be said that such action is unreasonable or does not have a rational basis**’ and ‘**is the result of an unconsidered, wilful and irrational choice of conduct . . .**” Garcia v. N.M. Human Servs. Dep’t, 1979-NMCA-071, 94 N.M. 178, 608 P.2d 154



## **Summary of a District Court Appeal of a Fair Hearing Decision**

- The party appealing (the Appellant) notifies the Court and HCA that it disagrees with the decision
- The HCA provides the Court and the Appellant with a copy of the Record on Appeal
- The Appellant files a Statement of Appellate Issues
- The HCA responds
- The Appellant can respond
- Either Party Can Request Oral Arguments and, if not,
- The District Court Judge issues a Decision



## **District Court Appeal #1**

- The HCA did not respond
- I filed a Motion asking the Judge to issue a Decision
- The Judge issued a Decision reversing the Fair Hearing Decision

## **District Court Appeal #2**

- The HCA did not respond
- Same as on the left
- Counsel for the HCA called me
- He agreed that the HCA Hearing Decision was Arbitrary and Capricious
- I will be presenting a Decision to the Judge (which HCA counsel will assent to) reversing the Fair Hearing Decision



A good outcome in a District Court appeal of an unfavorable Fair Hearing Decision is more likely if you have managed the Application well from the start.

- Provided the ISD with information in writing
- Asked the ISD for assistance in writing
- Reminded the ISD of their duties under their own regulations in writing
- Calendared deadlines
- Prepared for the Fair Hearing







A good outcome in a District Court appeal of an unfavorable Fair Hearing Decision is also dependent upon your Applicant's, or your Counsel's, ability to demonstrate to a First Judicial District Court Judge that the Hearing Decision is:

- (1) arbitrary, capricious, or an abuse of discretion;
- (2) not supported by substantial evidence in the record as a whole; or
- (3) not in accordance with the applicable law, statutes or rules.



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## Questions or Feedback

For questions or feedback regarding this session, or to discuss SHG's legal services or educational offerings for healthcare providers, please email us at [info@stotlerhayes.com](mailto:info@stotlerhayes.com)