

So, You Think Your Rights Were Violated?

The Grievance Process in the Community

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Introductions

- Caleb
- Jane
- Disability Rights Maine
- You

What is a Grievance?

- A complaint or a strong feeling that you have been treated unfairly-
Cambridge Dictionary
- A complaint against a hospital, provider or some agency in the community
from the Rights of Recipients of Mental Health Services
- Can be formal or informal
- Formal is in writing on any type of paper
- The guidelines for formal grievances against a provider are found in the
Rights of Recipients of Mental Health Services (RRMHS)
- No Statute of Limitations-can file anytime

Why would you want to file a grievance?

- To be heard about an issue at a higher level
- To generate a conversation in a formal way
- To remedy a specific situation
- To not have the same thing happen to others
- To change a policy or procedure
- To make administrators aware of issues with a particular staff member

Examples of things you can grieve?

- ❑ Restrictions on the use of phones
- ❑ Opening or withholding your mail
- ❑ Not having your treatment team meeting in a timely fashion
- ❑ Not respecting your privacy
- ❑ Not allowing you to go out to church
- ❑ Not having adequate food
- ❑ Questionable or inappropriate treatment

More Examples

- ❑ Refusing your request for records
- ❑ Improper restrictions on your right to have visitors
- ❑ Not having your treatment plan followed
- ❑ Disrespect
- ❑ A policy not existing regarding an important issue
- ❑ Failure to provide you with individualized treatment
- ❑ Failure to follow proper grievance procedures
- ❑ Treated differently after you file a grievance

What was violated?

- ❑ Rights of Recipients of Mental Health Services (RRMHS) for Adults
- ❑ Consent Decree
- ❑ Maine laws and statutes
- ❑ Federal laws
- ❑ Constitutional Laws (State and Federal)
- ❑ Policies and procedures
- ❑ Protocols
- ❑ Specific actions or failure to act
- ❑ Treatment plan

Rights under RRMHS

- To be treated with Dignity and Respect
- To have individualized treatment
- To have a discharge plan
- To be in least restrictive setting
- To provide reasonable visiting hours
- If your services are terminated to follow proper procedures

Rights continued

- To have a public guardian actively involved in your treatment
- To be give informed consent
- To refuse treatment unless otherwise court ordered
- To be notified of your rights
- To be provided due process when you file a grievance
- To provide reasonable visiting hours
- To have limitations of your rights be implemented according to law

Who May File a Grievance

- The recipient
- The recipient's guardian
- The recipient's attorney, designated representative or DRM
- Other persons aggrieved (visitor)

No Retaliation

- ❑ Not subject to disciplinary action
- ❑ No termination of services
- ❑ No reduction of services
- ❑ No denial of services
- ❑ No loss of privileges

Nuts and Bolts of Grievances

from RRMHS

- Right to Due Process
- Three Levels of Grievances- Level I, Level II, Level III
 - Level I-Supervisor of program/agency or designee
 - Level II-Director of Substance Abuse and Mental health Services (SAMHS)
 - Level III-Commissioner of DHHS
- Timeframes for responses and appeals for each level
- An opportunity to resolve the grievance informally must be provided but not necessary

Continued

- Grievances that pertain to a specific employee are handled by personnel department and following personnel policies, labor contracts and employment laws
- An agency can add other steps in the process but time cannot be longer then specified in RRMHS
- Burden of proof is on the agency or program to show compliance or action taken to comply with RRMHS
- You don't have to specifically state what law, statue, right was violated

Level I Grievances

- First step in process
- Submitted to the supervisor of the program or agency or a designee
- May be urgent or non-urgent
- 5 working* days for a response
- If more time needed a 5 working day extension may be made and grievant notified-Does not require your approval

***Working days are all days except weekends and holidays**

Level I (cont'd)

- A response is made to you in writing
- If you disagree you have 10 working days to file an appeal (a Level II grievance) to the Director of Substance Abuse and Mental Health Services (SAMHS)
- Copies are provided to DRM

Urgent Grievances

- ▣ Forwarded within one business day to the Director of SAMHS
- ▣ Reviewed and determined if
 - ▣ Urgent will review the grievance
 - ▣ Not urgent, return immediately to Level I for response
- ▣ What makes a Grievance Urgent?
 - ▣ So bad that immediate action is necessary
 - ▣ If not responded to at this level immediately then something may happen prior to the 10 days allowed for non-urgent Level I
 - ▣ If involves implementation of individual service plan
 - ▣ Consideration: May take more time if found non-urgent

Level II Grievances

- Sent to Director SAMHS and he/she or a designee shall respond to your Level II grievance within 5 working days of the day of receipt
- If more time to respond is needed must ask you permission for a 5 day extension
 - If complex or a lot of information you may want to agree with extension
- May hold a hearing at this stage but typically not done
- If you are dissatisfied then you may appeal to a Level III Grievance within 10 working days

Level III Grievance

- Sent to Commissioner of DHHS
- A formal written reply within 5 working days
- A 5 working day continuance may occur if a hearing is to be had or parties agree
- If no hearing at Level II then a hearing must occur
- The decision by the commissioner upon recommendation of the hearing officer is the final action by DHHS
- Appeal to the Superior Court under Maine Administrative Procedures Act

Level III Hearing

- Administrative Hearing Officer
- Informal court like procedure
- Recorded
- Opportunity to present witnesses
- May ask question of witnesses from both sides
- Opportunity to present evidence (written records)
- Opportunity to provide closing statement or argument

Grievance responses - Findings

- Administrative Procedures Act (APA) applies at all levels, I, II and III.
- For your reference in case you want to cite it, the citation for this statute is:

Title 5, Part 18, Chapter 375, Subchapter 4, Section 9060

APA requires that “Every agency decision made at the conclusion of an adjudicatory proceeding shall be in writing or stated in the record, and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.”

Responses-Continued

In layman's terms this means that at the very least, grievant is entitled to a response in writing that states clearly, what the decision was (rights violated, or rights not violated) and the reason why that conclusion was reached. If it's not clear why the decision was that no rights were violated, then it might violate the APA.

Responses-Continued

- A finding (decision) must be made at every grievance level-De Novo review
- Whatever material was used to make the decision (a policy, spoke top staff) should be detailed as a source and Right to review these materials
- Shall include notice to grievant of complete findings and recommendations except those that would violate confidentiality of another person
- Burden of proof shall be on the agency to show compliance with rights rules
- This is the written record that is the basis of the determination

Abuse, Mistreatment, Exploitation

- Allegations of abuse, mistreatment or exploitation reported to DRM and to the Chief Administrative Officer of the agency
- Mandated reporters-Be sure you want to have it reported
- An investigation of these types of allegations occurs and done by Adult Protective Services

Grievances Without Merit

- May be found without merit upon review at Level II and with agreement between agency Chief Administrative Officer or Director of SAMHS
- If found without merit then it shall provide the reasons in writing and given to the grievant
- Shall also give notice of how the issue can be be addressed
- Considered final agency action and may not be appealed beyond level II in grievance process
- May be appealed to Superior Court.

How to prepare for filing a grievance

- Request records
- Talk to witnesses
- Wait and think before writing and submitting
- Make a copy for records
- Write down who you gave it to
- If able research the source of rights violation-RRMHS
- Determine what you would like to have happen

How to write a grievance?

- Understand the problem-can you explain it to a friend?
- Write legibly
- Try to keep one issue per grievance or clearly separate
- State the facts with as much detail as possible-Who, What, When, Where
- Is this a violation of law, RRMHS, policy, practice-quote or provide copies of the provision If you don't know—you don't have to identify a law or policy
- Provide supporting documents, witnesses, photos
- If you have a supportive witness speak to them before naming them

Identification of solutions

- An Important step
- What is possible?
- Are there several ways to resolve the issue?
- Am I willing to offer alternative solutions?
- Can I make this a win-win solution?
- Is there a short term and/or long term solution?
- Be clear what you are willing to accept
- If a peer issue ask for staff intervention not peer punishment

What can you expect to happen?

- Level I
 - Come talk to you
 - May talk to others
 - May look at records
 - Will respond in writing

□ Level II

- May talk with you again
- May look at records again
- May have a hearing
- Mediation or settlement may be offered

□ Level III

- More formal
- Notice of hearing if none at Level II
- Ask if you have witnesses for the hearing

Risks in Filing a Grievance

- ❑ Could harm a future lawsuit
- ❑ Might ruin positive relationships
- ❑ Might be more effective to report to licensing/CMS
- ❑ Might be held against in other legal proceedings-forensic, guardianship
- ❑ File too many grievances might be taken less seriously
 - ❑ “Boy that called wolf”

Presentation of Your Case

- State relevant facts
- State why you think something was wrong if you know (RRMHS, policy, law)
- State how you were harmed
- State what you want and why it is a good solution
- I R A C
 - Issue
 - Rule
 - Application
 - Conclusion

Let's write a grievance

#1

You live in a group home run by Good Care, Inc. They are only allowing you go out on your own for two hours a day.

#2

Another resident at your group home run by Good Care, Inc. keeps coming into your room and touching your things.

#3

Your case manager only will see you one time a week for one hour on a specific day and time and at no other time.