

May 5, 2021

The Honorable Karen Fann, President
Arizona State Senate
1700 W. Washington
Phoenix, AZ 85007

The Honorable Russell Bowers, Speaker
Arizona State House of Representatives
1700 W. Washington
Phoenix, AZ 85007

Re: Report on Modified or Rejected Administrative Law Judge Conclusions of Law

Dear President Fann and Speaker Bowers:

A.R.S. 41-1092.08(B) provides that, within thirty days of receiving an administrative law judge's decision, the head of the agency may review the decision and accept, reject or modify it. If the head of the agency rejects or modifies the decision, the agency head must provide a written justification for the rejection or modification of each Finding of Fact or Conclusion of Law.

Subsection (B) also requires that if the agency head rejects or modifies a Conclusion of Law, the written justification shall be sent to the President of the Senate and the Speaker of the House of Representatives.

Most, if not all, administrative law judge decisions and the associated decision of the agency head regarding the AHCCCS program include information that is confidential under State and Federal law. See 45 CFR Part 164 and AAC R9-22-309. As such, AHCCCS cannot provide the full text of the administrative law judge decisions or the agency decision. As a practical matter, redacted versions of the justification for a modification or rejection of an administrative law judge's Conclusion of Law are not comprehensible without the full context of Findings of Fact and Conclusions of Law made by the administrative law judge.

For that reason, AHCCCS is providing quarterly summary information. For the quarter ending March 31, 2021, AHCCCS has identified five matters where the agency rejected or modified an administrative law judge's Conclusions of Law. During that same quarter, AHCCCS reviewed 94 administrative law judge decisions. The following Conclusions of Law were modified or rejected:

- A Conclusion of Law was modified to include legal citations that state that amounts withheld from Social Security Disability Benefits due to overpayment are countable income.
- A Conclusion of Law was modified to reference agency rule that physician review is determinative of need for institutionalization when the pre-admission screening score for a developmentally disabled applicant is less than the threshold but more than 38.
- The agency decision modified a Conclusion of Law to clarify that certain federal regulations cited in the decision referred to the US Department of Health & Human Services.
- A Conclusion of Law was modified to add multiple elements which the Notice of Discharge that Respondent nursing facility provided to Complainant failed to include and are required under 42 C.F.R. § 483.15(c)(5). Specifically, the effective date under (c)(5)(ii), the appeal rights under (c)(5)(iv), and the email for the State Long-Term Care Ombudsman under (c)(5)(v).
- A Conclusion of Law was modified to add an element which the Notice of Discharge provided by the Respondent nursing facility failed to include and is required under 42 C.F.R. § 483.15(c)(5). Specifically, the appeal rights under (c)(5)(iv).

Please feel free to contact me if you have any questions about this report.

Sincerely,



Jami Snyder
Director

cc: Richard Stavneak, Director, Joint Legislative Budget Committee
Matt Gress, Director, Governor's Office of Strategic Planning and Budgeting
Christina Corieri, Governor's Office, Senior Policy Advisor