

# **ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY**

## **BOARD POLICY**

**Date Issued 09/23**

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| <b>CHAPTER</b><br>Recipient Rights   |  | <b>CHAPTER</b><br>05   | <b>SECTION</b><br>001 | <b>SUBJECT</b><br>0050                |
| <b>SECTION</b><br>Recipient Rights   |  | <b>SUBJECT</b> Appeals of Recipient Rights Complaint Findings and Dispute Resolution |                       |                                       |
| <b>WRITTEN BY</b><br>Victor A. Amato |  | <b>REVISED BY</b><br>Telly Delor   |                       | <b>AUTHORIZED BY</b><br>SCCCMHA Board |

### **I. APPLICATION:**

- ☒ SCCCMA Board
- ☒ SCCCMA Providers & Subcontractors
- ☒ Direct-Operated Programs
- ☒ Community Agency Contractors
- ☒ Residential Programs
- ☒ Specialized Foster Care

### **II. POLICY STATEMENT:**

It shall be the policy of the St. Clair County Community Mental Health Authority (SCCCMHA) Board of Directors that the Recipient Rights Advisory Committee will act in the capacity of the Appeals Committee and hear appeals of recipient rights complaints.

### **III. DEFINITIONS:**

- A. Allegation: An assertion of fact made by an individual that has not yet been proved or supported with evidence.
- B. Appellant: The complainant, recipient, or legal guardian of a recipient (if any) who seeks review by an Appeals Committee or the Michigan Department of Health & Human Services (MDHHS) pursuant to sections 330.1784 and 330.1786 of the Mental Health Code.
- C. SCCCMHA Appeals Committee: A committee appointed under Section 774 of the Mental Health Code. Per the determination of the SCCCMA Board of Directors, the SCCCMA Recipient Rights Advisory Committee serves as the SCCCMA Recipient Rights Appeals Committee.
- D. Complainant: An individual who files a recipient rights complaint.
- E. Investigation: A detailed inquiry into and systematic examination of an allegation raised in a recipient rights complaint.
- F. Legal Guardian: A judicially appointed guardian or parent with legal custody of a minor recipient.
- G. Office of Recipient Rights (ORR): The office, created under Section 755 of the Mental Health Code,

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that is subordinate only to the SCCCMHA Chief Executive Officer, that is responsible for investigating, resolving, and assuring remediation of apparent or suspected recipient rights violations and assuring that mental health services are provided by SCCCMHA and its provider network in a manner that respects and promotes the rights of recipients as guaranteed by Chapters 7 and 7A of the Mental Health Code, P.A. 258 of 1974 as amended.

- H. Provider: A mental health service provider under contract with SCCCMHA.
- I. Recipient: Means an individual who receives mental health services from the Department, a community mental health services program, or a facility or from a provider that is under contract with the Department or a community mental health services program.
- J. Respondent: The service provider that had responsibility at the time of an alleged recipient rights violation for the services with respect to which a recipient rights complaint has been filed.
- K. Rights Complaint: A written or oral statement that meets the requirements of Section 776 of the Mental Health Code.

#### IV. STANDARDS:

- A. SCCCMHA has designated the Recipient Rights Advisory Committee as the Recipient Rights Appeals Committee.
- B. The Recipient Rights Appeals Committee is charged with reviewing written appeals to determine whether they meet the criteria for an appeal per the requirements established in Section 784 of the Mental Health Code.
- C. Any member of the Recipient Rights Appeals Committee who has a personal or professional relationship with an individual involved in an appeal shall abstain from participating in that appeal.
- D. The Recipient Rights Appeals Committee may request consultation with and technical assistance from the MDHHS-ORR.

#### V. PROCEDURES:

##### **Chief Executive Officer**

- 1. Ensures the complainant, recipient, and recipient's legal guardian (if one has been appointed) receive a statement describing their right to appeal, the grounds for appeal, advocacy organizations that may assist with filing a written appeal, the standards for filing an appeal, and an offer of assistance by the Office of Recipient Rights in submitting an appeal. See SCCCMHA administrative procedure #05-001-0035, Complaint Investigation, Reports, and Remediation.

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### **Office of Recipient Rights (ORR)**

2. Advises the complainant that there are advocacy organizations available to assist the complainant in preparing a written appeal and offers to refer the complainant to those organizations. In the absence of assistance from an advocacy organization, assists the complainant in meeting the procedural requirements of a written appeal.
3. Records receipt of written appeals, and maintains a log of all appeals received and the disposition of each appeal.
4. Submits written appeals to the SCCCMHA Recipient Rights Appeals Committee within five (5) business days of receipt of a written appeal.

### **SCCCMHA Recipient Rights Appeals Committee**

5. Reviews written appeals within five (5) business days of receipt of the appeal, determines if the appellant has standing to appeal, and determines if the appeal meets the appeal criteria below. This review may be conducted by the full committee, or by a sub-committee consisting of at least two committee members designated by the full committee to fulfill this responsibility. An appeal shall be based on one of the following grounds:
  - a. The investigative findings of the office are not consistent with the facts or with law, rules, policies, or guidelines.
  - b. The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
  - c. An investigation was not initiated or completed on a timely basis.
6. Notifies the appellant in writing, within seven (7) business days of receipt of the written appeal, that the appeal has been accepted or rejected based on the criteria established in Procedure #5. Ensures the reason for the acceptance or denial of the appeal is included in the notice. Provides the respondent, SCCCMHA, and the Office of Recipient Rights with a copy of the notice.
7. Does not consider additional allegations that were not part of the original complaint at issue on appeal, but informs the appellant of his/her right to file a complaint with the Office of Recipient Rights.
8. Meets in closed session no later than 30 calendar days after acceptance of a written appeal to review the facts as stated in all complaint investigation documents.
  - a. May request, at its discretion, additional supporting documentation from any party involved in the appeal.
  - b. May request, at its discretion, the personal appearance of any party involved in the appeal or any witnesses who may provide supporting evidence.
9. Identifies an outcome for the written appeal to include one of the following decisions:

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- a. Upholds the investigative findings of the ORR and the action taken or plan of action proposed by the respondent.
  - b. Returns the investigation to the ORR and requests that it be reopened or reinvestigated or recommends the SCCCMHA Board of Directors requests an external investigation by the MDHHS-ORR.
    - (1) If the Appeals Committee recommends an external investigation by the MDHHS-ORR take place, the Board of Directors may make the request to the MDHHS-ORR, in writing, within 5 business days of receipt of the request from the Appeals Committee.
    - (2) Within 10 business days of receipt of the investigative report from the MDHHS-ORR, the SCCCMHA Chief Executive Officer shall issue a new Summary Report. The Summary Report shall be issued to the appellant, recipient (if different than the appellant), the recipient's legal guardian, the SCCCMHA-ORR, and the SCCCMHA Recipient Rights Appeals Committee. The Summary Report shall include a statement describing the complainant's right to appeal to the MDHHS Appeals Committee, the grounds for an appeal, advocacy organizations that may assist with filing the written appeal, the standards for filing an appeal (submitted within 45 calendar days after receipt of the new Summary Report), and an offer of assistance by the Office of Recipient Rights in preparing a written appeal.
  - c. Upholds the investigative findings of the ORR, but directs the respondent to take additional or different action to remedy the violation. This direction shall be based on the fact that the remedial action taken/proposed did not meet the requirements of Section 780 (Remedial Action) of the Mental Health Code. Written notice of this direction for additional or different action shall be provided to the respondent and SCCCMHA.
  - d. Directs the SCCCMHA Chief Executive Officer to address the root cause of the lack of timeliness of the investigation with their ORR.
10. Documents its decision in writing. Within ten (10) business days after reaching its decision, the Appeals Committee shall provide copies of its decision to the respondent, appellant, recipient (if different than the appellant), the recipient's legal guardian (if any), SCCCMHA, and the SCCCMHA-ORR. This decision shall include the justification for the Committee's decision.
11. Informs the appellant of their right to a Level 2 Appeal. A Level 2 Appeal must be made in writing within 45 calendar days after the appellant receives notice of the local Appeals Committee's decision. A Level 2 Appeal may be made if the original appeal was based on the question of whether the investigative findings of the ORR were inconsistent with the facts or with law, rules, policies, or guidelines, AND
  - a. Only after the local Appeals Committee made the decision to uphold the findings of the ORR, or
  - b. When upon reinvestigation, the findings of the ORR remain unsubstantiated.

### **Recipient Rights Director**

12. Submits an Investigative Report to the SCCCMHA Chief Executive Officer, if the Appeals

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Committee directs the ORR to reopen or reinvestigate the complaint, within 45 calendar days of receipt of the written decision of the Appeals Committee or by a time period extended at the discretion of the Appeals Committee (not to exceed ninety [90] days).

### **Chief Executive Officer**

13. Issues a new Summary Report to the appellant, recipient (if different than the appellant), the recipient's guardian (if any), the ORR, and the Recipient Rights Appeals Committee within ten (10) business days of receipt of the second investigative report.
  - a. If the investigative findings determine the allegation is not substantiated, the appellant may file a Level 2 Appeal.
  - b. If the investigative findings result in a substantiation of a previously unsubstantiated rights violation, but the appellant disagrees with the adequacy of the action or plan of action proposed by the respondent, the appellant may file a new appeal with the local Recipient Rights Appeals Committee.
  - c. If the Appeals Committee determines the outcome of the investigation is inadequate, the Appeals Committee shall inform the appellant of their right to file a Level 2 Appeal.

### **Recipient Rights Appeals Committee**

14. If the second investigative report arrives at the same outcome as the initial investigative report, but the respondent is directed to take additional or different action in order to remedy the violation, the Appeals Committee will base its decision on one of the following:
  - a. The action taken or proposed did not correct or remedy the rights violation.
  - b. The action taken or proposed will not/was not taken in a timely manner.
  - c. The action taken or proposed did not/will not prevent a future recurrence of the violation.
15. Provides written notice to the respondent of its decision to direct the respondent to take additional or different action, citing the action taken was not in compliance with Section 780 of the Mental Health Code. The written notice will include one, part, or all of the following:
  - a. Notification that the respondent must provide written notice to the Appeals Committee within thirty (30) calendar days of receipt of the Appeals Committee's decision that additional or different remedial action was implemented in order to remedy the rights violation.
  - b. Notification that the respondent must provide written notice to the Appeals Committee within thirty (30) calendar days of receipt of the Appeals Committee's decision that the additional remedial action was implemented in a timely fashion.
  - c. Notification that the respondent must provide written notice to the Appeals Committee within thirty (30) calendar days of receipt of the Appeals Committee's decision that the additional remedial action will prevent future recurrence of the violation.

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### **Respondent**

16. Provides written notice to the Appeals Committee within 30 calendar days of receipt of the Committee's decision that additional remedial action was implemented in order to remedy the rights violation, was implemented in a timely fashion, and/or will prevent recurrence of the violation.

### **SCCCMHA Recipient Rights Appeals Committee**

17. Provides written notice of the respondent's action to the appellant, recipient (if different than the appellant), the recipient's legal guardian, SCCCMHA, and the SCCCMHA-ORR.
  - a. If the action taken by the respondent is determined by the Appeals Committee and/or the appellant to remain inadequate to remedy the violation, the appellant shall be informed by the Appeals Committee of their right to file a recipient rights complaint against the SCCCMHA Chief Executive Officer.

### **Recipient Rights Director**

18. Ensures the Department has access to all necessary documentation and other evidence cited in the complaint, if the appellant submits a Level 2 Appeal.

### **SCCCMHA Recipient Rights Appeals Committee**

19. Maintains a log of all appeals received and the disposition of each appeal. Note: The SCCCMHA Recipient Rights Director will staff this function for the Appeals Committee.

## **VI. REFERENCES:**

- A. Michigan Mental Health Code, Sections 330.1772, 330.1774, 330.1780, 330.1784, and 330.1786
- B. MDHHS/CMHSP Managed Specialty Supports and Services Contract: FY20 Attachment C6.3.2.4, Technical Requirement- Recipient Rights Appeal Process

## **VII. EXHIBITS:**

- A. Recipient Rights Appeals Committee Protocol

## **VIII. REVISION HISTORY:**

Dates issued 11/88, 12/90, 10/92, 03/97, 03/98, 02/01, 02/03, 02/05, 02/07, 02/09, 02/10, 09/12, 07/13, 07/14, 07/15, 07/16, 07/17, 07/18, 07/19, 07/20, 10/20, 09/21, 09/22.

## Recipient Rights Appeals Committee Protocol

### The Recipient Rights Appeals Committee is convened to:

1. Review appeals within five (5) business days after receipt of an appeal to determine if the appeal meets the following basic criteria.
  - a. The investigative findings of the office are not consistent with the facts or with law, rules, policies, or guidelines.
  - b. The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
  - c. An investigation was not initiated or completed on a timely basis.
2. Notify the appellant in writing within seven (7) business days, if the appeal was **denied** because the criteria was not met, and provides a copy to the respondent, SCCCMHA, and the SCCCMHA-ORR.
3. Notify the appellant in writing within seven (7) business days if the appeal was **accepted** and also provides a copy of the appeal to the respondent, SCCCMHA, and the SCCCMHA-ORR.
4. Review within thirty (30) days after receipt of a written appeal the facts stated in all complaint investigation documents and does one of the following:
  - a. Upholds the investigation findings of the ORR and the action taken or plan of action proposed by the respondent.
  - b. Returns the investigation to the ORR and requests that it be reopened or reinvestigated OR recommends the SCCCMHA Board of Directors requests an external investigation by the MDHHS-ORR.
  - c. Upholds the investigative findings of the ORR but directs the respondent to take additional or different action to remedy the violation.
  - d. Directs the SCCCMHA Chief Executive Officer to address the root cause of the lack of timeliness of the investigation with their ORR.
5. Documents the decision in writing and provides copies within ten (10) working days after reaching its decision to the respondent and others as indicated in the procedures section of this policy. Includes a statement of the appellant's right to appeal to Level 2 Appeals.

### Meeting Information:

1. The appealing party is not present at the meeting unless so requested by the Appeals Committee. Please note: The complainant received a Summary Report of the complaint from the Chief Executive Officer, which may be less detailed than the Investigative Report issued to the Chief Executive Officer and respondent.
2. Details for the Appeals Committee are staffed by the ORR. Assigned ORR recording secretary takes minutes of official action by the Appeals Committee.
3. The Committee members review the following documents provided by the ORR prior to the meeting: Original Complaint, Report of Investigative Findings, Remedial Action Plan (if submitted), Summary Report, and Written Appeal.
4. The chairperson/designee opens the meeting, introduces members and others present, and states the purpose of the meeting. He/she reminds members that the meeting is a hearing procedure mandated by the Mental Health Code and not a court proceeding. The chairperson/designee asks those members with a personal or professional relationship with individuals involved in the complaint to abstain from participating in the appeal.
5. The Committee members discuss the appeal and the investigative documents. Staff members of the ORR may answer questions during the meeting; however, these staff shall not participate in the decision of the Committee.
6. The Chairperson/designee may take a voice vote on any action. Any member of the Committee may call for a secret decision. The Chairperson/designee has the option to ask the staff members of the ORR to leave the meeting at any time.
7. Chairperson/designee adjourns the meeting.