

GRIEVANCE PROCESS - EVIDENCE

[NOTE: These are cases where questions about the use of evidence in the grievance process arose. See also the "BURDEN OF PROOF" and "CREDIBILITY" sections of this Digest for more specific issues related to evidence.]

DECISIONS

1. The **State Grievance Examiner has the discretion** whether to conduct a **field investigation** or rely on documentation submitted in the grievance process. Where **sufficient documentation exists, personal interviews of staff are not necessary**, either. (Level IV decision in Case No. 00-SGE-08 on 2/21/01.)
2. A grievance was filed on well past the 45-day timeframe in DHS 94.41(5)(a). However the county reviewed it at Level I and II. It is within the client rights specialist's discretion to accept complaints that are filed after the timeframes. **A long delay in filing a grievance after an event significantly compromises the quality of the investigation** that may be conducted. Individuals often do not recall all the details of what happened or what was said after such a lengthy period of time. In this case, since it was accepted at Level I and II, it was also accepted at Level III. The Level III review was **limited to a desk review** of this case based on the available documents. The ability to conduct a thorough investigation was limited by the delay in the filing of the grievance. (Level III decision in Case No. 00-SGE-16 on 6/19/01, upheld at Level IV.)
3. On the day before her discharge, an Occupational Therapist (**OT**) **made a certain comment to the patient**. The **OT had not been personally interviewed** during the Level III review. Much more information about the OT's role and perspective was provided during the Level IV review. This **additional evidence** was found to be **relevant and credible information bearing on the appeal**. (Level IV decision in Case No. 01-SGE-08 on 8/27/02, modifying the Level III finding.)
4. A hospital noted on appeal of findings of rights violations that the **State Grievance Examiner (SGE) had not contacted the patient's doctor directly** during the Level III review. The hospital asserted that this evinced a lack of professional courtesy and constituted a violation of due process. The SGE should probably have contacted the doctor to provide him with a sense of fairness. But the **SGE has broad discretion** in how to conduct Level III reviews. Where the SGE **felt he could rely on the written records** available to him, **failure to contact the doctor was not an abuse** of that **discretion** or a violation of due process. (Level IV decision in Case No. 02-SGE-04 on 9/19/03.)
5. There must be **sufficient evidence** to show it was **more probable than not** that a **doctor departed from professional judgment** in his prescribing medication to a

patient after a phone call with her. Such **evidence would have to come in the form of a second opinion from a professional of equal or greater standing than the doctor**. Where there was **no such evidence** presented, the finding of a rights violation will be overturned. (Level IV decision in Case No. 02-SGE-04 on 9/19/03, overturning the Level III.)

6. Where a service provider asserted that the facts in the Level III decision were incorrect, the **file records were re-reviewed in the Level IV process**. The **facts** of the Level III decision regarding documentation **were found to be incorrect**. However, the **documentation had been made in margin notes** rather than in some clearer form. This **poor documentation** resulted in the finding of a rights violation at Level III. There was **sufficient evidence**, on closer inspection, to indicate that **the violation did not occur**. (Level IV decision in Case No. 02-SGE-04 on 9/19/03, overturning the Level III.)
7. There is **insufficient evidence** to conclude that a **facility's Chief Legal Counsel discouraged someone from filing a complaint**. The facts indicate he **merely informed** the individual that **he did not believe he had a malpractice claim that would be upheld in court**. The fact that the individual was able to bring this complaint and appeal it up through the grievance process to Level IV indicates that his right to complain was not violated. (Level IV decision in Case No. 02-SGE-07 on 3/10/04.)
8. The sister/guardian of a woman filed a grievance about the care the woman had received while she was living in her own apartment. She had been receiving supportive home care services from an independent service provider under a general contract with the county. The **guardian alleged abuse and neglect** because of failure to report theft of monies and possessions and fraud and/or misrepresentation of funds. These issues were **properly referred to other authorities**. To **criminally convict** a person of abuse, neglect, or criminal misconduct, there must be **proof beyond a reasonable doubt**. A **patient rights violation** only requires a finding that the allegations are proved "**more probable than not**" true. (Level III Decision in Case No. 03-SGE-04 on 6/15/04.)
9. A client of a **methadone clinic** was also undergoing treatment for **hepatitis** and liver cancer. The clinic had some concerns about a **small amount of alcohol** in her system, which she claimed was a **byproduct** of her **hepatitis treatment**. From the **limited facts** at hand, it was not possible to determine if any violation of her rights occurred. (Level III decision in Case No. 04-SGE-02 on 12/20/04)
10. The Level III decision **thoroughly addressed** all of the complainant's issues. In her appeal to Stage 4, the complainant provided **no new evidence** sufficient to justify reversing the Level III decision. The Level III decision was therefore affirmed. (Level IV decision in Case No. 04-SGE-07 on 8/15/05)

11. A patient **felt she was treated disrespectfully** by group leaders in sessions. **Statements by treatment staff** to a patient regarding normal procedure for responding to homework, regarding saving matters for future sessions due to time constraints, and regarding the processing of disability claims, **generally, do not amount to violations of the patient's rights without proof of exacerbating circumstances**. Provider staff must communicate directly regarding how matters are generally handled and there was **no evidence that the group leaders were personally deriding this patient** by discussing procedural issues in response to her questions and requests. (Level III decision in Case No. 11-SGE-01 on 6/28/11)

12. While program staff may be capable of disrespectful, passive-aggressive behavior towards patients, in such cases it is **essential that grieving parties provide more than hearsay evidence** for a rights violation to be found. (Level III decision in Case No. 11-SGE-01 on 6/28/11)

[Document last updated: 02/15/12]