

REQUEST FOR RECORDS DISPOSITION AUTHORITY		JOB NUMBER <i>NI-468-10-1</i>	
To: NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD COLLEGE PARK, MD 20740-6001		Date received <i>8/11/10</i>	
1. FROM (Agency or establishment) Department of Health and Human Services		NOTIFICATION TO AGENCY In accordance with the provisions of 44 U.S.C. 3303a, the disposition request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10.	
2. MAJOR SUBDIVISION Office of the Secretary			
3. MINOR SUBDIVISION Departmental Appeals Board (DAB)			
4. NAME OF PERSON WITH WHOM TO CONFER Elaine Pankey, OS Records Officer	5. TELEPHONE NUMBER (202) 690-5687	DATE <i>8/11/10</i>	ARCHIVIST OF THE UNITED STATES <i>[Signature]</i>
6. AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached <u>7</u> page(s) are not needed now for the business for this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, <input checked="" type="checkbox"/> X is not required <input type="checkbox"/> is attached; or <input type="checkbox"/> has been requested.			
DATE <i>August 9, 2010</i>	SIGNATURE OF AGENCY REPRESENTATIVE Yvonne Wilson <i>[Signature]</i>		TITLE HHS Records Officer
7. ITEM NO.	8. DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9. GRS OR SUPERSEDED JOB CITATION	10. ACTION TAKEN (NARA USE ONLY)
	Records of the Department of Health and Human Services, Departmental Appeals Board.		

Attachment to SF115, Request for Records Disposition Authority, for the records of the Department of Health and Human Services (HHS) Departmental Appeals Board (DAB)

The DAB was chartered in 1973 as the Departmental Grant Appeals Board; until the 1980's, DAB jurisdiction was limited to disputes arising under the large public assistance grants, such as Medicaid and Aid to Families with Dependent Children, as well as discretionary grant programs. The Administrative Conference of the United States cited the DAB as a model administrative dispute resolution body. DAB's jurisdiction has gradually increased. In 1988, the Secretary delegated to the DAB responsibility for adjudicating civil money penalties and exclusions imposed under a wide range of fraud and abuse authorities. In 1993, the Secretary delegated to the DAB responsibility for hearing appeals in enforcement cases brought by the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration or HCFA). Also, in 1995, the Secretary delegated to the DAB the Medicare Appeals Council function of hearing appeals in Medicare coverage and payment cases and entitlement cases.

The DAB provides impartial, independent review of disputed decisions in a wide range of Department programs under more than 60 statutory provisions. The DAB generally issues the final decision for the Department, which may then be appealed to federal court. The DAB may issue a recommended decision for action by another official. The DAB has three broad areas of jurisdiction each with its own set of judges and staff. The DAB also has a leadership role in implementing Alternative Dispute Resolution (ADR) across the Department since the DAB Chair is the designated Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996. DAB staff includes trained mediators and facilitators. The DAB's ADR responsibilities include providing ADR services and training and coordinating and facilitating negotiated rulemaking committees.

DAB Divisions

Alternative Dispute Resolution Division

The Alternative Dispute Resolution Division provides alternative dispute resolution (“ADR”) services in appeals filed with the Board’s other three Divisions. ADR in Board cases typically involves either mediation or ombudsman services.

Appellate Division

The Appellate Division provides staff support for the Board Members, who are career civil servants appointed by the Secretary to provide an impartial, independent review of disputes arising in a wide range of HHS programs. The Board also provides appellate review of certain types of Administrative Law Judge decisions. In most cases, the Board decision is the final administrative decision of HHS.

Civil Remedies Division

The Civil Remedies Division (“CRD”) provides staff support for the Administrative Law Judges (“ALJs”) assigned to the DAB. The ALJs are qualified under the Federal Administrative Procedure Act to conduct hearings on the record. Generally, the ALJ decision is an initial decision that may be appealed to the Board. If the ALJ decision is not appealed, it represents the final administrative decision.

Medicare Operations Division

The Medicare Operations Division provides staff support to the Administrative Appeals Judges and Appeals Officers on the Medicare Appeals Council. The Council provides the final administrative review of claims for entitlement to Medicare and individual claims for Medicare coverage and payment filed by beneficiaries or health care providers/suppliers.

Item 1. Records of the Chair of the Departmental Appeals Board

Correspondence, speeches, talking points, briefing books, issues papers, official calendar, and related records of the Chair of the DAB. Records date from 1973.

Disposition: PERMANENT. Cut off at the end of each fiscal year in which created or received. Retire to the Federal Records Center 10 years after cutoff or when volume warrants. Transfer to the National Archives 20 years after cutoff.

Item 2. DAB Correspondence and Subject Files

- a. Program Correspondence Files – official correspondence, reports and other records that relate directly to the primary mission of the DAB and document the policies, programs, and organizational structure established to fulfill the primary mission. Records date from 1973.

Disposition: PERMANENT. Cut off at the end of each fiscal year in which created or received. Retire to the Federal Records Center 10 years after cutoff or when volume warrants. Transfer to the National Archives 20 years after cutoff.

- b. Administrative Correspondence Files – relate to administrative support activities, to include but is not limited to staffing and procedures not directly related to the essential primary purpose of the DAB, training materials developed by DAB staff (such as subject matter trainings developed for attorney and administrative staff), certificates of completion of training courses, and standard operating procedures that do not document DAB policies.

Disposition: TEMPORARY. Cut off at the end of each fiscal year in which created or received. Destroy/delete 3 years after cutoff.

Note: For all other Office Administrative Files, use GRS 23, item 1.

- c. Working Correspondence Files: created in the course of creation and review of program and administrative correspondence files, including drafts and notes.

Disposition: TEMPORARY. Cut off when record copy has been created. Destroy/delete when no longer needed for reference.

- d. Legal Internship Program Files – records that relate to unpaid internships offered during three cycles (summer, fall semester and spring semester) to law students from law

schools throughout the United States. Records include but are not limited to resume submissions, rejection letters, rosters of accepted law students, division assignments, and schedules of activities.

Disposition: TEMPORARY. Cut off at the end of each internship cycle in which created or received. Destroy/delete 1 year after cutoff.

Item 3. Judge and Attorney Working Files – drafts, background information, notes, research materials, and other information not appropriate for inclusion in the final case file, created by the Administrative Law Judges, Administrative Appeals Judges, Board Members, attorneys, and staff.

Disposition: TEMPORARY. Cut off when case is closed. Destroy/delete when no longer needed for reference.

DAB Databases

Item 4. DAB Automated Case Tracking System (DABACTS) – This system includes, but is not limited to, the tracking of the work of the Appellate, Civil Remedies, and ADR divisions from the 1990's to the present.

- a. Master Data Files: Case Tracking Data – Data in the system includes new appeals and motions, names of attorneys assigned to cases, name of each case, type of case, copies of documents contained in the hardcopy case files, ALJ decisions, Board decisions, and case disposition information. Data in the system may include but is not limited to names of administrative staff, interns, mediators, attorneys and/or judges assigned to a case, docket numbers assigned to each case, type of case (usually by program area) to include any applicable statutory or regulatory deadline, case disposition information copies of documents associated with a case to include but is not limited to scanned copies of decision.

Disposition: TEMPORARY. Cut off data to closed cases at the end of each fiscal year. Delete 7 years after cutoff.

- b. Master Data File: Roster of Mediators - A separate database segment that contains a roster of participating mediators (sharing neutrals program) which may include but is not limited to mediator's name, job position and agency of employment.

Disposition: TEMPORARY. Cut off when mediators withdraw from program. Destroy/delete when no longer needed for reference.

- ~~c. Outputs – Information for working files and official case files, as appropriate; systematic, periodic, and *ad hoc* reports. Data output may include but is not limited to reports for closed cases, active (pending) cases, cases by program areas, cases by assigned mediator, attorney and/or judge, case age, dispositions, and decisions appealed to Federal courts (and associated case dispositions).~~

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~~Note: File with appropriate case file.~~

~~For *ad hoc* queries (paper printouts or electronic), use GRS 20, item 12 or 16.~~

- d. ~~Documentation~~— GRS 20, item 11 a (1)

Item 5. Medicare Operations Division Automated Case Tracking System (MODACTS) – This system tracks the cases before the Medicare Appeals Council and before the Federal courts.

- a. Master Data Files – Data in the system may include but is not limited to names of administrative staff, interns, attorneys and/or judges assigned to a case, docket numbers assigned to each case, type of case (usually by program area) to include any applicable statutory or regulatory deadline, case disposition information, and copies of documents associated with a case to include scanned copies of decision. CourtACTS segment may include but is not limited to original docket number, information from civil action to include which Federal district court appeal was filed, administrative staff and/or attorney assigned to the appeal (preparation of certified record), attorneys for the plaintiff, OGC and AUSA, and costs associated with transcribing ALJ or MAC hearings.

Disposition: TEMPORARY. Cut off data to closed cases at the end of each fiscal year. Delete 7 years after cutoff.

- ~~b. Outputs— Information for working files and official case files, as appropriate; systematic, periodic, and *ad hoc* reports. Data output may include but is not limited to reports for closed cases, active (pending) cases, cases by program areas, cases by attorney and/or judge, case age (to include cases issued by statutory or regulatory deadline), dispositions, transcription cost reports and Federal court dispositions.~~

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~~Note: File in appropriate case files.~~

~~For *ad hoc* queries (paper printouts or electronic), use GRS 20, item 12 or 16.~~

- c. ~~Documentation~~ – GRS 20, item 11 a (1)

Item 6. Records of the Alternative Dispute Resolution Division - Training Materials

- a. Record copy of manuals, syllabi, role-play scenarios and other training aids developed by the ADR Division for alternative dispute resolution and conflict management trainings. The courses provided to HHS and other federal employees include but are not limited to basic mediation skills, transformative mediations, mediation for EEO counselors, and negotiations skills.

Disposition: TEMPORARY. Cut off at end of fiscal year in which training materials are revised/superseded. Destroy/delete 3 years after cutoff.

- b. Working files: created in the course of creation and review of training materials, including drafts and notes.

Disposition: TEMPORARY. Cut off when record copy has been created. Destroy/delete when no longer needed for reference.

Note: For the Disposition of ADR General and Case Files – see GRS 1, item 27.

The Appellate Division - The Board resolves disputes with outside parties such as state agencies, Head Start grantees, universities, nursing homes, doctors, and Medicare beneficiaries. In a single year, disputes heard by the Board may involve as much as \$1 billion in federal grant funds.

The Board provides *de novo* review (which may include an evidentiary hearing) of certain types of final decisions of HHS operating components, such as:

- Determinations in discretionary, project grant programs, including disallowances, terminations and denials of refunding, cost allocation plan disapprovals, and rate determinations; and
- Determinations in mandatory grant programs, including disallowances of state claims under titles I, IV-A (Temporary Assistance for Needy Families), IV-D (Child Support Enforcement), IV-E (Foster Care and Adoption Assistance), X, XIV, XVI, XIX (Medicaid), and XXI (State Children's Health Insurance Program) of the Social Security Act.

The Board also provides appellate review of certain types of ALJ decisions, which may be appealed by either party. These include most types of decisions of ALJs assigned to the DAB, decisions of Food and Drug Administration ALJs regarding civil money penalties, and decisions of Department of the Interior ALJs in Indian Health Service contract/compact cases. In most cases, the Board decision is the final administrative decision of HHS. From 1974 to 2010 there have been approximately 2300 decisions by the Appellate Division.

Item 7. Records of the Appellate Division:

- a. Official Case Files – Official records kept by the Appellate Division for each docketed appeal, including documents, motions, briefs, exhibits, audio recordings of hearings, transcripts of hearings, orders, decisions, and correspondence pertaining to each case. Files are closed when final administrative decision is reached. (Supersedes NC1-235-79-5, item 1)

Disposition: TEMPORARY. Cut off closed case files at the end of each fiscal year. Retire to the Federal Records Center 2 years after cutoff. Destroy/delete 7 years after cutoff.

and the corresponding logbooks that act as the finding aid for these decisions. CARLY DOCCA 10/17/17

- b. Official Decisions – Record copy of official decisions of the Board/Appellate Division. Records date from 1974-on. (Supersedes NC1-235-79-5, item 2)
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Disposition: PERMANENT. Cut off at end of each fiscal year. Retire to the Federal Records Center 10 years after cutoff or when volume warrants. Transfer to the National Archives 30 years after cutoff.

The Civil Remedies Division - CRD is composed of ALJs and a support staff composed of attorneys, paralegals, and administrative support staff. The ALJs are qualified under the Federal Administrative Procedure Act to conduct hearings on the record. Generally, the ALJ decision is an initial decision that may be appealed to the Board. If the ALJ decision is not appealed, it is the final administrative decision.

CRD ALJs hold hearings in which parties may challenge the following types of actions:

- fraud and abuse determinations by the Office of the Inspector General (OIG) or the Centers for Medicare & Medicaid Services (CMS);
- provider/supplier enforcement and certification determinations by CMS;
- terminations of or refusal to grant or continue federal funding for alleged civil rights violations;
- Program Fraud Civil Remedies Act determinations;
- civil money penalty determinations by Social Security Administration (SSA); and
- equal Access to Justice Act determinations relating to OIG proceedings.

CRD ALJs also provide hearings and issue initial agency decisions regarding civil money penalties proposed by CMS under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Item 8. Official case files of the Civil Remedies Division - Includes decisions and correspondence pertaining to each case.

Disposition: TEMPORARY. Cut off closed case files at the end of each fiscal year. Retire to the Federal Records Center 2 years after cutoff. Destroy/delete 7 years after cutoff.

Note: Records of the Medicare Operations Division—The Medicare Operations Division provides staff support to the Administrative Appeals Judges (AAJs) and Appeals Officers (AOs) on the Medicare Appeals Council (MAC). The MAC provides the final administrative review of claims for entitlement to Medicare and individual claims for Medicare coverage and payment filed by beneficiaries or health care providers/suppliers.

Manual Instruction

~~The Social Security Administration (SSA) makes the initial determination on a claim for entitlement to Medicare. A contractor of CMS, including a Medicare Advantage organization, makes an initial determination on an individual claim for Medicare coverage and payment. On appeal, an ALJ at the Office of Medicare Hearings and Appeals provides a hearing. If dissatisfied with an ALJ decision or dismissal, the parties to the ALJ hearing may request MAC review. The MAC may also undertake review of an ALJ decision on its own motion. Final MAC decisions may be appealed to federal court if certain "amount in controversy" requirements are met. Records consist of the official case files, including claims and decisions.~~

~~Records are maintained by MOD for 3 months (MAC issues a dismissal or denial of review) or 6 months (MAC issues a decision) after final administrative decision is released, then records are transferred for maintenance to the designated CMS contractor (Part A, Part B, Part C or Part D appeals) or the Social Security Administration (entitlement and income related adjustment amount (IRMAA) appeals). If a MAC decision is appealed to Federal district court, records are held for 3 months after the certified record has been furnished to the Court and then transferred to the appropriate contractor/agency.~~