



Administrative Hearings and Testimony

Office of Developmental Disabilities Services

2021

Objectives

- Guidance on notices and forms
- Timelines
- Hearing Roles & Responsibilities
- Informal Conferences
- Dismissals or Withdrawals
- How to prepare for an Administrative Hearing
- Testimony
- Cross-Examination
- Preparing to be a Good Witness

Notice of Planned Action

OAR 411-318-0020

Without a written notice, there is no time limit for requesting a hearing.

- A Notice of Planned Action (NOPA) must be used when eligibility or service is denied, terminated, or services reduced
- The Department form must be used, and is available on the ODHS Forms Server in multiple languages: <https://sharedsystems.dhsoha.state.or.us/forms/>
- For NOPA timelines and notice writing instructions see OAR 411-318-0020(2) and the [ODDS Eligibility Notice Worker Guide](#)
- The NOPA includes information on hearing rights, timelines, help requesting and filling out a hearing request, continuing services, and possible repayment of services provided after an effective date of a NOPA
 - A hearing request form should not be sent with every NOPA as standard practice; the hearing information is already provided, local offices should provide more information **upon request**

Amend or Withdraw (Rescind) a Notice

You may be asked to Amend or Rescind/Withdraw a NOPA

- Amend = if you still plan to take the action identified within the NOPA but need to correct something on the NOPA
 - Choose from the NOPA drop down “This notice amends the previous notice.”
- Withdraw = if you no longer plan to take the action identified within the NOPA.

Amended Notices

Why an Amended NOPA?

To correct:

- Effective Date of Planned Action
- OAR citations
- Reason for Planned Action statement
- Add documents included in the decision
- Case Specific

Amended NOPAs reset the 'clock' for effective dates and possible overpayments.

Department hearing reps may also amend a NOPA

Rescinding a NOPA

If a NOPA was issued (and a hearing has not been requested) and it is determined that the action is not necessary or the action will not be taken, the NOPA must be withdrawn.



This may be done with a letter, identifying the following:

Date of NOPA
being
withdrawn

Action that was
identified in the
NOPA, and

Reason that
Action will no
longer be taken



Timelines & Dates



Denial dates

OAR 411-318-0020(2)(b)

- **For Denials**, the Notice Date and Effective Date are the same
- **For Terminations or Reductions**, the Effective Date will be the end of the current (if sent on or before the 18th) or next month (if sent the 19th or later)

Hearing timelines

Requesting a Hearing – within 90 calendar days of a NOPA (OAR 411-318-0025(2)) when eligibility or a service is denied, terminated, or services reduced/suspended

Oral and Written Hearing Requests = Submit Request for Hearing (443dd) form to ODDS within 3 business days of receiving the request (OAR 411-318-0025(2)(b)(A) and (B))

Hearings Representative Introduction - First week of case assignment

Office of Administrative Hearings (OAH) Referral - within 21 days of the 443dd hearing request

Hearing Date – typically within 30 days from the referral

- Hearings Representative will forward scheduled witnesses and schedule witness preparation appointment prior to scheduled hearing

Hearings Exhibit Documents - sent a week prior to the hearing

OAH ALJ Final Order - typically within 90 days of the hearing record closing

Hearing Roles & Responsibilities



Hearing Roles

- Office of Administrative Hearings (OAH): third party agency that administers the hearing
- Administrative Law Judge (ALJ): employed by OAH to hear appeals and determine rule compliance in hearings
- Hearing Representative: Oregon Department of Human Services (ODHS), Aging and People with Disabilities (APD) – the Department representative for the hearing process and notifications
- Subject Matter Expert (SME): ODHS Office of Developmental Disabilities Services – Eligibility Policy/Rule = Eligibility Policy; Other Services = Policy Analyst for the subject
- Witness (Department or individual's witnesses): the CME staff who made the decision, and the claimant's chosen witness
- Claimant – Individual denied/terminated/reduced/suspended
- Claimant Representative – individual appealing or representing the individual on their behalf

Your Role in Administrative Hearings

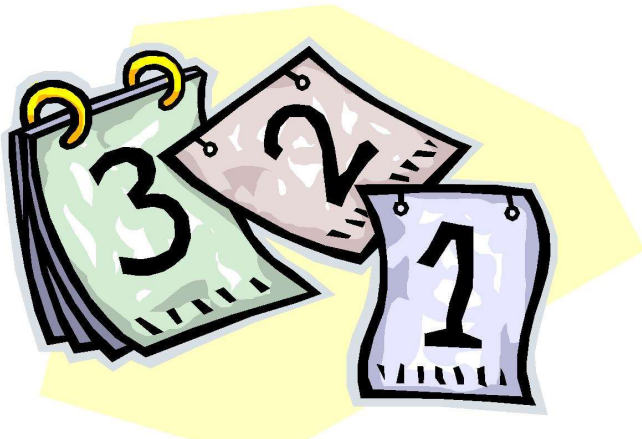
A request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request Form 0443DD.

OAR 411-318-0025(2)(b)

- Verbal requests – offer assistance filling out the hearing request and submitting it on their behalf
 - The date a person tells you they wish to file a hearing request establishes the Date of Request, and begins the timeline



Your Role in Administrative Hearings



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- Submitting the 443dd hearing request to ODHS/ODDS immediately/same day of the request is best practice
- ALL hearing requests **MUST** be forwarded to ODDS **within 3 business days.**
- Fully complete the 443dd hearing request and **date stamp it.**



Administrative Hearing Request (443dd) form

- Offer to complete the 443dd form for the individual
- Continuation of Benefits/Services - Ask if they wish for benefits to remain the same; If yes, explain about possible overpayment
- Ask if the individual wants an expedited hearing
- Ask if the claimant speaks English
- Ask about alternate format



Assisting with a Hearing Request (443dd) form

- Do not discourage the individual/representative/attorney from requesting a hearing
- Ask why they disagree with the decision and add to the reason for request on the form
- In Person Requests – must include signature and date
- Verbal/Phone Request – In “signature of claimant” section enter “verbal request completed by” and your name; Date = date of verbal request.

Assisting with a Hearing Request (443dd) form



- Submit completed 443dd forms to ODDS by email to: odds.complaints@dhsoha.state.or.us
- Late hearing requests (90 days after the notice date) should still be submitted

Office of Developmental Disability Services
Administrative Hearing Request



INTELLECTUAL/DEVELOPMENTAL DISABILITIES

If you want an administrative hearing to contest an action related to developmental disability services, you can fill out this form and mail or fax it to the address under Part 2 on page 2. If you prefer, a DHS employee or an employee at your Community Development Disabilities Program or Support Services Brokerage can fill out this form for you. Please contact your local office if you need this form in another language or an alternate format.

Claimant or claimant's representative completes this part	
Name of claimant:	Date of birth:
Full address:	Phone:
Name of representative:	Relationship to claimant:
Representative's address:	Phone:
Does the claimant speak English? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If no, what is the claimant's primary spoken language:	
Does the claimant need written materials in an alternate format? <input type="checkbox"/> Yes (specify below) <input type="checkbox"/> No	
<input type="checkbox"/> Braille <input type="checkbox"/> Audio tape <input type="checkbox"/> Large print <input type="checkbox"/> Diskette <input type="checkbox"/> Oral presentation <input type="checkbox"/> Other / Written materials in another language:	
I received a written notice: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Date of notice:	Notifying agency or CDDP:
Service(s) involved:	
I am asking for a hearing because I do not agree with the decision to:	
<input type="checkbox"/> Deny services <input type="checkbox"/> Terminate services <input type="checkbox"/> Reduce services <input type="checkbox"/> Suspend services <input type="checkbox"/> Other:	
Briefly explain why you disagree with the decision (attach additional sheets as needed):	
Before you answer this question, please read "Part 4" on page 3. Do you want your services to stay the same (not reduced or stopped) while you wait for a hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No Before you answer this question, please read "Part 5" on page 3. Check this box if you meet the requirements in part 5 and want to request an expedited hearing: <input type="checkbox"/>	

Claimant's signature

The administrative law judge may conduct a hearing by phone. In a telephone hearing, the administrative law judge participates by phone. The claimant may be at the Developmental Disability office or another place. By signing below, I understand that I will be asked to have an informal conference with an agency representative.

Signature of claimant: _____ Date: _____

Department of Human Services (DHS) completes this part		
Date of decision notice:	Date of initial hearing request:	Date 0443DD rec'd by DHS:
Case number (prime number or DD followed by last 4 digits of SSN):		
DHS representative for this matter:	Phone:	
Issue code:	Date:	

Part 1: Right to a hearing — What is an administrative hearing?

- You have the right to request a hearing using this form if you disagree with a decision about your developmental disability services. The hearing is an opportunity to tell a neutral party why you do not agree with DHS's decision. You can ask another person to represent you and you can have other people testify for you at the hearing.
- Hearings are held by an Administrative Law Judge and the Office of Administrative Hearings, which is an independent agency and is not part of the Department of Human Services (DHS) or the Oregon Health Authority (OHA).
- DHS does not discriminate against anyone. This means DHS helps all who qualify. DHS does not deny help based on age, race, color, national origin, sex, sexual orientation, religion, political beliefs or disability. You can file a complaint if you think DHS discriminated against you.
- You can talk with a manager or ask for a meeting to discuss the decision about your services by contacting your local CDDP or support service brokerage. This will not affect your right to a hearing or your deadline to request a hearing.
- If you have unanswered questions, you may call the Governor's Advocacy Office at 1-800-442-5238.

Part 2: Hearing request — How do I request a hearing and what is the deadline?

- There are 3 ways to request a hearing:
 - Complete page 1 of this form and mail this form to: Office of Developmental Disability Services (ODDS), Attn: DD Administrative Specialist, 500 Summer St NE, E-09, Salem OR 97301; or
 - Complete page 1 of this form and fax the form to 503-373-7274; or
 - Make a verbal request for a hearing by speaking directly with your local CDDP office or support service brokerage, your caseworker, or a DHS or ODDS employee. The employee will fill out this form for you and send it to ODDS.
- What is the deadline to submit this form? In most cases, DHS must receive your request within 90 days from the date of notice on the Notification of Planned Action. You may still request a hearing after 90 days; the Department will process and grant the request as outlined in OAR 411-001-0520.

Part 3: Hearing rights — Where do I find more information?

File Tools View se0443dd [Read-Only] [Compatibility Mode] - Word

- **Where do I find the laws about hearings and the hearing process?** Laws about hearings and the hearing process are in ORS 183.411 to ORS 183.470, ORS 411.095, OAR 137-003-0501 through 137-003-0700, OAR 411-318-0000 through OAR 411-318-0030, OAR 461-025-0300 through 461-025-0375, and OAR 461-025-0300.
- **Who can help me at the hearing?** You may be represented at the hearing by a lawyer or any adult, including a family member or another layperson. You may be able to receive advice and possible legal representation by calling the Public Benefits Hotline (1-800-520-5292), Disability Rights Oregon (1-800-452-1694), and the Oregon State Bar (1-800-452-8260).
- **Note to military personnel:** Active duty service members have a right to stay (delay) hearing proceedings under the federal Service Members Civil Relief Act. For more information, contact the Oregon State Bar (1-800-452-8260) or the Oregon Military Department (1-800-452-7500), or find the nearest military legal assistance office here: <http://legalassistance.law.af.mil/content/locator.php>.
- **What happens after I request a hearing?** If you request a hearing, a hearing representative from DHS will contact you to schedule an informal conference with ODDS.
- **What happens if there is no hearing?** You may lose your right to a hearing if you do not ask for a hearing on time, if you withdraw your hearing request, or if you do not appear at your hearing. If a hearing is not held, the Notification of Planned Action will become DHS's final decision (*called a Final Order by Default*). You will not receive a separate Final Order by Default. DHS refers to the case file, along with any materials submitted in this matter, as "the record." DHS uses the record to support the Final Order by Default.
- **ORS 183.480** allows you to appeal the Final Order by filing a petition in the Oregon Court of Appeals. You must file an appeal within 60 days of the Final Order.

Part 4: Continuing services — How can I keep getting benefits until my hearing?

- You may ask for your services to stay the same until the date of the hearing decision (*"continuing services"*). You may request continuing services on page 1 of this form, or by telling your CDDP, support services brokerage, or DHS.
- If you receive continuing services after the effective date of planned action and then lose the hearing, **you may be required to pay for the services you receive between the effective date of planned action and the hearing decision.**
- To receive continuing services, **DHS must receive your written or verbal request for a hearing by the "effective date of planned action" on the Notification. If your services are terminated, you may have services reinstated if DHS receives the request within 10 business days of the effective date of planned action on the Notification of Planned Action.** If you miss these deadlines, you may still request continuing services. Submit your request and DHS will determine if there is good cause for the late request.
- If you decide to stop your services and you prevail (*win*) at the hearing, DHS will resume your services with the CDDP or support service brokerage.

Part 5: Expedited hearings — Can I have my hearing within five working days?

- You may have the right to an "expedited hearing" (*within five (5) working days*), if you are denied a medical service that creates an immediate, serious threat to your life or health, or if DHS denied your request for continuing services (*part 4*). Expedited hearing requests are processed according to ORS 411.095(4), OAR 411-318-0025(3), OAR 410-120-1860(5), and OAR 410-200-0145(11).
- You must request an expedited hearing on page 1 of this form, or by specifically telling a CDDP, support services brokerage, or DHS employee that you need an expedited hearing because you will be denied a service that creates an immediate, serious threat to your life or health.

End of document ■

Name of claimant

130%



What are Continuing Services?

- If an individual is given a NOPA that terminates, reduces or suspends service(s), the individual has the right to request those services remain unchanged during the hearing process.
- The APD Hearing Unit will review Continuing Services request and respond to ODDS and the claimant with a formal notice either approving or denying the Continuation of Services request

Who can be a representative for an individual at a hearing?

OAR 411-318-0025(6) Representation

(a) A representative may be chosen by a claimant to represent the interests of the claimant during an informal conference and hearing.

(b) Employees for the Department, CDDP and Support Services Brokerage are authorized to appear as a witness on behalf of the Department during an informal conference and hearing.

Individuals who are in State Custody

[SPD-IM-11-051](#) Contested Cases for
Children in DHS Custody.

Other options for a Representative:

- Foster parent
- Relative
- Legal Guardian
- CASA
- Disability Rights Oregon/Attorney
- PSWs

Hearing Communication

Once the Hearing Request is sent and a Hearing Representative assigned, the Hearing Representative becomes the main point of contact of the case for the claimant

ODDS will request hearing records from CDDP and forward to Hearing Representative

Hearing Representative will contact claimant and CDDP staff on next steps



ODDS Hearing Communication

Hearings Helpful Hints and Expectations handout and email notification

- Summary of documents required
- What's Next (Hearing Rep assignment, informal conference)
- Communication following hearing assignment comes from the hearing rep
- Staff Roles
- Links to training
- How to handle communication from applicant or new information

Before the Hearing

OAR 411-318-0005(14)
and 411-318-0025(5)

An Informal Conference is offered...

- Voluntary meeting prior to a hearing date
- An opportunity to explain the decision and evidence informally
- Between the claimant, representative (if any), Department staff (you), Hearing Representative
- The Hearing Representative will offer to schedule the conference date and time
- An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

Before the Hearing Informal Conference, Continued...

- New information MAY be provided during an Informal Conference
- If new information changes the decision this is OKAY
- New information may not always make a decisional difference, which should be explained at this time
- The Department can ask for time to review new information and respond at a later date
- The Department (you) may withdraw and reopen the decision process, or the CDDP may issue a new notice based on the new information

Dismissing Hearing Requests

When there is a withdrawal from the hearing process

Dismissal:

- A hearing request can be dismissed when:
 - The individual/representative/attorney decides not to move forward with the hearing request or
 - The Department determines a withdrawal is appropriate
- A Dismissal (withdrawal) notice will be issued by the Hearing Representative
- Only a Department Hearing Representative can dismiss a hearing request
- Notice will be sent to the CDDP and the individual/representative

Claimant withdraws

Order of Dismissal/Withdrawal

- Issued by the Department Hearing Representative
- The decision and NOPA stands
- If Continuation of Services were approved and the Effective Date has passed, complete all required actions immediately
- Hearing Representatives will refer any overpayments to the Office of Payment Accuracy and Recovery Unit (OPAR) and include ODDS central staff in the referral

Department withdraws

Order of Dismissal/Withdrawal

- Department Hearing Representative issues Order of Dismissal/ Withdrawal.
- The Department should withdraw a NOPA when:
 - There is a lack of evidence supporting the decision
 - There is inaccurate or additional information needed
 - Additional information has been submitted
 - An error in the determination may have been made
- Services should continue if the determination is reversed, or until a new notice is issued



Hearings

If the case goes to a hearing:

- The Hearing Representative will schedule a Witness Preparation meeting with you
- All hearings occur by phone unless the judge approves a request from the claimant/representative/attorney for an in-person hearing.
- Claimant/representative/attorney no shows after 15 minutes into the hearing = Department prevails/the NOPA is upheld

After hearing:

Final Order is issued to the Hearing Representative in writing. Hearing Representative will receive the Final Order and notify ODDS of actions to be taken.

During a Hearing – Testimony

- Prioritize all hearing activities over other tasks; hearing timelines are fast and critical
- Be very specific when answering
- Avoid acronyms
- You may be cross-examined (claimant or representative).
- Expect open-ended questions, such as questions starting with who, what, when, where, why, and how
- Pace yourself, pause and always ask for the question to be repeated if you do not understand what is being asked
- Review the case/documents before the hearing
- Reference Department exhibits, using exhibit number and page number
- You want the ALJ to become aware of the facts that support the decision

During a Hearing – Testimony Questions

The Hearings Representative and/or the Administrative Law Judge will first ask questions to establish credibility, such as:

- Your name, and spelling
- Your employer, length of employment, position title and duties
- Your training, work experience and education
- What disabilities does the claimant assert? What are the claimant's documented diagnosis(s)?
- What records were used in your decision?

During a Hearing – Eligibility Testimony Questions

- How does the Department determine eligibility for I/DD services for an individual?

Example: “OAR 411-320-0080 provides guidance on the application and eligibility process; a completed application must occur following due diligence and the criteria in OAR 411-320-0080(4) or (5) must be met in addition to the criteria in the age sections of the rule.”

- How does the Department determine a professional is qualified?

Example: “OAR 411-320-0020(40) defines a Qualified Professional as a licensed professional trained to diagnose Intellectual or Developmental Disability who is a licensed clinical psychologist, Medical Doctor, Doctor of Osteopathic Medicine or a Nurse Practitioner.”

- How does the department define significant impairment?

Example: “OAR 411-320-0020(3)(e) defines significant impairment as a composite score at least two standard deviations below the mean, or two domain scores two standard deviations below the mean, or when an ABAS is used two or more skill areas that are two or more standard deviations below the mean.”

During a Hearing – Eligibility Testimony Questions

Be prepared with OAR citations...

- What is the Department's determination for the claimant for an Intellectual Disability as described and defined by the OARs 411-320-0020 and 411-320-0080?
- What is the Department's determination for the claimant for other Developmental Disability as described and defined by the OARs 411-320-0020 and 411-320-0080?

During a Hearing – Services Testimony Questions

Examples...

During a Hearing – Eligibility Testimony Examples

Too General: “I determined that application for services must be denied.”

Better: “As described in OAR 411-320-0080(4) and (5) defined in OAR 411-320-0020(3)(e) the ABAS scores in exhibit A5 indicates the individual does not have significant impairment. Their GAC of 75, is not two or more standard deviations below the mean, and there are not two or more domain or scaled skill area scores two standard deviations below the mean”

- Some responses will be lengthy and detailed
- Be prepared to ‘tell a story’ about the assessment you did that led to the decision
- The value in your testimony comes from records you directly interpreted

During a Hearing – Cross Examination

Cross examination – when the individual, or their representative have an opportunity to ask you questions

- Cross examination may or may not occur
- If cross examined by a lawyer or representative – Questions may:
 - Be very pointed that suggest an answer
 - Put words in your mouth, even words that you did not say

Examples: “You had your mind made up that was ineligible before you even read the records, didn’t you?”

“True or false: You deny all applicants?”

Always answer questions 100% truthfully, but minimum necessary - Don’t give testimony beyond what is necessary to answer the question.

During a Hearing – Being a good witness

- Tell the truth
- “I don’t know” is a valid response if it is the truth
- If you find that you’ve made a mistake, say so
- If you’re asked a question that requires you to look up some information, it is OK to say “I need to look that up.” (example, a specific sub-section of rule or exact opinion in a report)
- Answer with the information and exhibit number if the answer is in the exhibits
- Always use rule citations to support your testimony if appropriate
- Be well prepared

**Preparing to be a good witness
begins before a decision is made**



Before the NOPA

- Narrate actions clearly and completely
- Be accurate on rules and policies
- Assure due diligence has been completed and well documented
- Reach out to ODDS policy staff
- Call the individual or their representative to explain you are sending a decision, what it is and why eligibility can't be met
- Offer other resources or referrals
- Invite new information to be submitted within 12 months without a new application

After the NOPA

- Actively participate with the hearing representative to prepare
- Hearing representatives are not DD experts
- Make sure they understand your decision before a hearing
- Be very familiar with the exhibits before the hearing
- Review the Exhibit List and Contested Case Notice as soon as possible
- Notify the hearing representative of any errors, omissions, or inconsistencies you find in the exhibits **well before** the hearing
- During testimony - be confident and firm
- NEVER editorialize unless you're specifically asked for your opinion
- Tell the truth - Even if the truth results in the Department or ALJ reversing the decision – Even if you think it makes you look bad – Even if you think making a small comment or correction won't change the outcome



Questions?

Submit questions to: ODDS.Complaints@dhsosha.state.or.us

