

OREGON DEPARTMENT OF HUMAN SERVICES

# HEARINGS INFORMATION

*Public Assistance and Food Stamp Programs*



 | Independent. Healthy. Safe.



You are receiving this brochure because you requested a hearing. This brochure gives you more information about the hearing process, what to expect, and how you can prepare for and participate in the hearing.

**THE NOTICE OF HEARING:** You will receive or have received a notice of hearing from the Office of Administrative Hearings (OAH). This notice tells you the time and place of your hearing. Read the notice carefully! It gives important information about how to participate in your hearing. OAH will be in charge of your hearing.

If you miss your hearing, the DHS action will go into effect. The agency file will become part of the record. You will receive a dismissal order.

**REQUEST FOR POSTPONEMENT:** You can ask to delay your hearing. Contact the hearing coordinator listed on your notice of telephone hearing right away if you need to delay the hearing. Only the Office of Administrative Hearings (OAH) can postpone the hearing. You are required to appear at the scheduled time unless OAH has agreed to reschedule the hearing.

**THE INFORMAL CONFERENCE:** This is a meeting before the hearing between you and a representative of DHS. In it, you can tell more about why you asked for a hearing and make sure DHS fully understands your situation. You can also learn more about why DHS took



its action. Sometimes, you and DHS can agree on a resolution.

You are not required to attend the informal conference. But it is a good idea to attend. It may be by telephone or in person. If the DHS hearing representative does not offer you a telephone conference and you would like to have one, ask about it.

**GETTING STARTED:** You can go to the DHS office and ask to see your file. You can ask for copies of documents from the file. You can ask DHS questions about items in the file. You can contact DHS to get additional DHS documents you think you need for your hearing and to request that specific DHS employees be witnesses in the hearing. If DHS does not agree, you may file a written request called a “motion” with the Office of Administrative Hearings.

DHS must show you the rules it follows and the evidence it plans to use. Before the hearing date, the DHS hearing representative will send you a written contested case notice along with the rules and copies of the documents that support the DHS position. The administrative law judge will have the same documents. Please review the documents before the hearing date and have them with you during the hearing.

**ABOUT THE HEARING:** The issues to be considered at the hearing include the DHS Notice of Decision that



caused you to request a hearing. The DHS contested case notice also presents the issues.

A hearing is not as formal as being in court. Most DHS hearings are held by telephone. The other participants in the telephone call are the administrative law judge, a DHS hearing representative, witnesses for DHS, and any witnesses that you have participate.

Your right to a hearing is set out in Oregon Administrative Rules (OAR) 410-120-1860, 410-141-0264, 461-025-0310 and Oregon Revised Statutes (ORS) 411.095. The Office of Administrative Hearings conducts the hearing under rules that start at OAR 137-003-0501 and statutes that start at ORS 183.411. You can locate the rules at <http://arcweb.sos.state.or.us/banners/rules.htm>. You can locate the statutes at [www.leg.state.or.us/ors/home.htm](http://www.leg.state.or.us/ors/home.htm). The statutes and rules are the laws that apply to your case.

Before the hearing, the Office of Administrative Hearings sends you a notice of telephone hearing. Read the instructions carefully. You and your witnesses will need to follow the instructions on this notice to participate in the hearing. Make sure your witnesses can participate by telephone.

If you have a disability or do not speak English, you may contact the hearing coordinator listed on your notice of telephone hearing about getting special help



with communication for the hearing. Your rights to an interpreter are set out at OAR 137-003-0590.

You can go to the local office for a phone hearing by making advance arrangements. You can be at home, work or another place you choose. Be sure it will be a quiet place. The use of a cell or cordless phone is not recommended. If you use a cell phone, please make sure that it is fully charged. You should call from an area where there is no phone static. If your phone fails during a hearing, you may lose your opportunity to participate fully.

You may contact the hearing coordinator listed on your notice of telephone hearing if you want to ask for the hearing to be held in person. If the hearing is held in person rather than by phone, you need to be there on time, with your witnesses. If a witness can't be there in person, he or she needs to be near a telephone.

Please do not bring children to the hearing location. It is important that you be able to focus on this very important matter.

The hearing will be recorded. This is to save or preserve the testimony and other evidence for appeals. If you want a copy of the recording, ask during the hearing.

**THE ADMINISTRATIVE LAW JUDGE (ALJ):** The ALJ works for the Office of Administrative Hearings (OAH).





OAH is not part of DHS. The ALJ is independent. The ALJ will make a decision based on the evidence and testimony given at the hearing.

The ALJ's role is to find out all the facts important to your case. Some facts will come from DHS staff and the other people they bring. Other facts can come from you and the people who know about your case.

**REPRESENTATION:** You can represent yourself or a lawyer can represent you. DHS does not pay for your lawyer. You may call the Public Benefits Hotline (a program of Legal Aid Services of Oregon and the Oregon Law Center) at **800-520-5292** for advice and possible representation. You can also try your county's bar association or the Oregon State Bar (**800-452-8260**).

In the Food Stamp program and in medical programs, someone who is not a lawyer is also allowed to represent you. In all other programs, you must represent yourself or be represented by a lawyer or a legal assistant who is supervised by a Legal Aid attorney.

Give the hearing coordinator listed on your notice of telephone hearing your representative's name and address as soon as you have it. If you decide right before or at the hearing that you need a representative, tell the administrative law judge. You may be given more time.



DHS is usually represented by an employee who is not a lawyer. Occasionally, DHS is represented by a lawyer.

**WHAT YOU NEED TO PROVE:** Clients often disagree with a DHS action because they think DHS misunderstood the facts or did not apply its policies correctly. In your hearing, you must prove you are entitled to the level of benefits you are seeking. Normally each fact must be proved by a preponderance of evidence, meaning each fact must be shown to be more likely true than not. In an overpayment case, DHS will need to prove the amount you received and explain the reasons for the error. If your hearing is about an intentional program violation, DHS has the burden of proof. But if you contend that you signed a waiver of hearing under duress, it is your burden of proof.

The hearing is your chance to present your case. The case will be decided using only the exhibits and testimony from the hearing.

**EVIDENCE:** There are different kinds of evidence that can support a position. One is testimony and the other is documents. The evidence must support or relate to the hearing issues. The administrative law judge will decide if it does.

**TESTIMONY:** This is what witnesses say under oath at the hearing. You or other people you choose can testify at the hearing.



If someone knows facts about your case, you may want the person to give testimony. Examples of people who might know about your case are friends, relatives, neighbors or employers. All witnesses must promise to tell the truth.

If a witness does not want to testify, ask the administrative law judge for a “subpoena.” That is a document ordering someone to testify. Ask for a subpoena as soon as possible. Unless you have an expedited hearing, you must get a subpoena to the witness at least five days before the hearing. DHS does not pay the witness fees and mileage for your witnesses.

**EXHIBITS:** You may submit your own exhibits that support your position. Some examples are documents, receipts, pay stubs, letters, records, video, audiotapes, or photographs. Please see the exhibit list enclosed with the notice of telephone hearing for information on how to do this. Send copies of your exhibits well in advance of the hearing to the Office of Administrative Hearings at the address listed on the notice of hearing. You must also send a copy of your exhibits before the hearing to the DHS hearings representative.

**RESPONDING TO EVIDENCE:** You have the right to disagree with any evidence of DHS and explain your side of the story. If you disagree, please wait for





your turn to tell your side. Speaking out of turn causes confusion.

Also, there are times you can formally object to the DHS evidence. This includes when you think the evidence does not relate to the hearing issue. You can also object when the evidence does not prove or disprove the issues involved in the hearing. If you object, the administrative law judge (ALJ) will decide if the DHS evidence can be used.

DHS can also object to your evidence for the same reasons. If this happens, you will be able to tell why you think the evidence should be used.

You and your representative can question any witness who testifies. The ALJ and the DHS representative can also question any witness. You may want to take notes.

At the hearing, you may think of other evidence that could help your case. You can ask for more time to get evidence or to find a lawyer.

**THE DECISION:** The ALJ generally does not announce the decision at the hearing. The decision will be in writing. In most cases, it will be sent to you within 45 days of the hearing. You can call the hearing coordinator (listed on your notice of telephone hearing) about the status of the decision.



You will receive a written copy of the decision. In most cases, the decision is called the Final Order. Occasionally, there is a Proposed Order before the Final Order.

If you were receiving continuing benefits, lose the hearing, and the decision is final, you must pay back the continuing benefits received. Continuing benefits means that DHS delayed a planned reduction or closure of your benefits until the outcome of the hearing. If you were not receiving continuing benefits, win the hearing, and the decision is final, DHS will give you benefits you should have received.

**APPEALS:** If you disagree with the decision in the Final Order, you may ask in writing for a rehearing or reconsideration of the Final Order. The order tells you how to do this and where to send your written request. Your written request must be received or postmarked no later than sixty (60) days from the date of service of the order.

You can also petition the Court of Appeals for review of your case. You must do this within 60 days from the date of service listed on your order.

If you receive a Proposed Order, you may file objections if you disagree. The Proposed Order tells you how to do this.



**FOR MORE INFORMATION:** Contact the DHS hearings representative if you need more information about your case or this brochure.

Contact the hearings coordinator from the Office of Administrative Hearings if you need more details about the hearing and receiving the decision.

General information about the right to request a hearing and how to request a hearing is on DHS Forms 0443 and 0447. Some DHS notices have different processes. The other processes are described on those notices.

This brochure can be obtained in an alternate format for individuals with disabilities upon request by calling: **503-378-3523**. Contact the hearing representative if you need this brochure in another language.



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*The information contained in this brochure is current as of 2008 and could change without notice.*



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