Administrative Hearings

2019 SC/PA Conference

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Introductions

Objectives

- NOPAs
- OARs
- Your role during an Administrative Hearing
  - Hearing Request form (0443)
  - Continuing Benefits
- Representatives/Attorneys
- Contested Cases for Kids in CW Custody
- Discovery documentation
- Testifying
- Dismissals/withdrawals
- Hearings
- Final Orders

Where does an Administrative Hearing Start?

WHEN IS A WRITTEN NOTICE REQUIRED?

When I/DD eligibility is denied or terminated.

When an I/DD service is denied, reduced, suspended, or terminated.

(OAR 411-318-0020(1))

Note: Without a written Notice, there is no time limit for requesting a hearing.

Is There a Required Form for a Notice?

Use Form 0947 (NOPA-Notification of Planned Action) to send a Notice.

(OAR 411-318-0020(2))

- The NOPA has instructions for completing this form.
- ODDS has a Worker Guide for completing this form.

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DHS Oregon Department of Human Services
Office of Developmental Disabilities Services

Notification of Planned Action

Date of notice: _____ Effective date of planned action: _____

Individual's name: _____
Individual's date of birth: _____ Individual's prime number: _____
Street address: _____
City: _____ State: _____ ZIP code: _____
Legal guardian's name *(if applicable)*: _____

The purpose of this Notification is to inform you of the planned action below. The planned action is based on Oregon Administrative Rules and the records listed in this Notification. If you disagree with the decision, **you have the right to request a hearing,** as provided in ORS chapter 183 and OAR 411-318-0025. For information on how to request a hearing and the hearing process, see Parts 1– 4 on the following pages.

If you have questions, if your situation changes, or if you have relevant records not included below, please contact the person at this agency:
Notifying agency: _____
Notification completed by: Select one Other: _____
Name: _____ Phone: _____

Planned Action

- ☐ Your request for services from the DHS Developmental Disabilities Program has been denied.
- ☐ Your current services will not change, but your specific request for _____ has been denied.
- ☐ Your services are going to be select one
  Specific services involved: _____

Reason for Action

After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because _____.

Relevant Oregon Administrative Rules

The planned action is based on the following OAR(s) *(include subsections)*:
943-001-0020(3); _____; _____; _____
Oregon Administrative Rules can be found on the website of the Oregon Office of the Secretary of State.

Records Used in the Decision

Date	Type of record/report/evaluation	Author

Other information and comments: _____

You have the right to review these records. You can request the records by contacting the person listed on page 1.

Notice of Hearing Rights

- You have the right to challenge this decision by requesting a contested case hearing. Hearings are held by an Administrative Law Judge and the Office of Administrative Hearings, which is independent from DHS. If you want a hearing, you must request a hearing **within 90 calendar**

Screens 1-2 of 5 130%

What Parts of the NOPA Are Required by OAR

- The date the NOPA is mailed or hand delivered
- The effective date of the action
- Correct names and addresses
- Sending the NOPA in the individual's preferred language, format or method appropriate for effective communication and a copy in **English.**
  - Retain an English copy of any translated or alternate format of each NOPA in client's file.
- **Sending the NOPA to the individual, their representative, legal guardian or attorney**

What Parts of the NOPA Are Required by OAR con't.

- The specific service(s) to be denied, reduced, suspended or terminated.
  - Do not list service element numbers
- The reason(s) for the action.
- The specific OARs (including specific sections of the OAR) which guide the decision.
- All documents relied on for making the decision.
  - Be specific

Question 1

All decision notices must be on the Department approved NOPA form (SDS 0947).

True or False?

Questions?

Do I amend or withdraw a NOPA?

- Amend = if you still plan to take the action identified within the NOPA but need to make corrections to the NOPA

- Withdraw = if you no longer plan to take the action identified within the NOPA.

Amended Notices

- 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 if necessary

Withdraw NOPAs

- If a NOPA was issued **(and a hearing has not been requested)** and it is determined that the action is not necessary, made in error, or the action will not be taken, the NOPA must be withdrawn.
  - If hearing requested, notify Hearing Rep. They will issue a Dismissal Order
- This can be done by writing a letter (or sending a notice) identifying the following:
  - Date of NOPA being withdrawn
  - Action that was identified in the NOPA, and
  - Reason the Planned Action will no longer be taken

Voluntary Changes

- When an individual or their legal guardian requests a:
  - Reduction
  - Suspension, or
  - Termination

  of their service plan (when plan is revised to show a change for the lesser amount or services are closed entirely), a NOPA must be provided to the individual and their legal guardian.

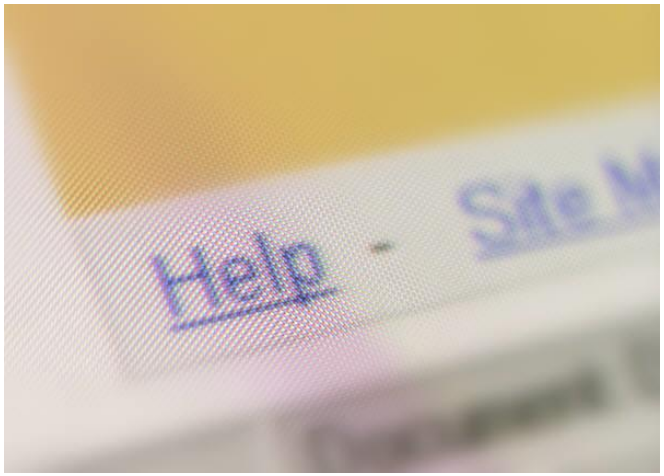
Situations that Do Not Require A NOPA

- Final Orders
- Withdrawals/Dismissals
- Personal Support Workers (PSWs) *

HELP! With Writing a NOPA

- Writing a NOPA requires patience and attention to detail. Many situations that require a denial, closure or reduction can become very complex.

- Ask for help if things are getting too complicated on the NOPA!



Questions?

Effective Dates

Effective dates for NOPAs

- Effective dates are different depending on the type of action.

- Read the OAR 411-318-0020(2) carefully when deciding on what effective date to use for each action.

Terminations/Reductions/ Suspensions

- For a NOPA mailed or hand delivered on or before the 18th of the month, the effective date of the NOPA is the last day of the calendar of the month in which the NOPA was mailed/delivered.
- For a NOPA mailed or hand delivered on or after the 19th of the month, the effective date of the NOPA is the last calendar day of the following month.

Denials

- For a denial, the effective date of the NOPA is the same date the NOPA is mailed or hand delivered to the individual and/or the representative/attorney of the individual.

- Example 1: Stitch applied for I/DD Services. Stitch is found to not be eligible for I/DD services per the OARs. SC, Minnie Mouse, needs to issue a NOPA on 07/17/2019 to notify Cinderella of the denial. The effective date in this case would be 07/17/2019.

- Example 2: Cinderella requested an IPad. This request is found not to meet the OARs for Ancillary Services. PA, Ariel, needs to issue a NOPA on 07/17/2019 to notify Cinderella of the denial. The effective date in this case would be 07/17/2019.

Question 2

The effective date of a denial is the same date that the NOPA is mailed.

True or False?

- Example 3: Eeyore has been found not to be I/DD eligible any longer through the Redetermination process. Eligibility Specialist, Winnie the Pooh, needs to issue a NOPA on 07/19/2019 to notify Eeyore of the denial of I/DD eligibility and termination of all K-Plan/waivered services. The effective date in this case would be 09/30/2019.

Questions?

Citing OARs

- OARs must be cited to their fullest and closest rule citation.

- I/DD rules always start with 411, then list:
  - the division of program
  - the rule section
  - the sub-section

- Cite **ALL** OARs that apply to the action that is being taken, including definitions as applicable.

Citing OARs on a NOPA

- Incorrect OAR citations:
  - 411-320-0020(3)(a)(A)(i), (b), (c)
  - 411-320-0080(3)(4)(5)(6)

- Correct OAR citations:
- 411-320-0020(3)(a)(A)(i), 411-320-0020(3)(b), 411-320-0020(3)(c)
- 411-320-0080(3), 411-320-0080(4), 411-320-0080(5), 411-320-0080(6)

Contingent Language on a NOPA

- AVOID CONTINGENT LANGUAGE IN YOUR NOPAs!
  - Do not base a NOPA on a future event. Example:

    *If you do not provide this information to me before 07/10/2019, your services **will** close. If I receive this information by this date, your services will remain open after 07/10/2019.*

Questions?

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))

If the individual and/or their representative/attorney calls in or requests assistance in filling out the Hearing Request Form, you must assist them over the phone. Do not require them to come in to the office.

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Office of Developmental Disability Services Administrative Hearing Request

DHS | Oregon Department of Human Services
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? ☐ Yes ☐ No

If no, what is the claimant's primary spoken language:

Does the claimant need written materials in an alternate format? ☐ Yes (specify below) ☐ No

☐ Braille ☐ Audio tape ☐ Large print ☐ Diskette ☐ Oral presentation

☐ Other / Written materials in another language:

I received a written notice: ☐ Yes ☐ No **Notifying agency or CDDP:**

Date of notice: **Service(s) involved:**

I am asking for a hearing because I do not agree with the decision to:

☐ **Deny services** ☐ **Terminate services** ☐ **Reduce services** ☐ **Suspend services**

☐ **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? ☐ Yes ☐ 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: ☐

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:**
  1. 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
  2. Complete page 1 of this form and **fax the form to 503-373-7274**; or
  3. **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?

Name of claimant 130%

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- **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%

Your Role in Administrative Hearings, con't

- Fully complete the 0443 form for the individual/representative/attorney.
  - Ask:
    - if they wish for the individual's services to remain the same. If yes, explain about possible overpayment.
    - if the individual wants an expedited hearing.
    - the claimant speaks English or another language
    - the claimant requires materials in alternate format
    - the individual why they disagree with the decision and put their reason on the form.

Your Role in Administrative Hearings, con't

- **Do not** discourage them from requesting a hearing.
- If this request is made in person, then the individual/representative/attorney needs to sign and date the 0443 form.
- If request is made over the phone, under claimant's signature section on the line for "signature of claimant", **you** will enter "verbal request completed by" and your signature. Under the date you put the date you received the verbal request.

Your Role in Administrative Hearings, cont.

- ALL hearing requests MUST be forwarded to ODDS once the 0443 form has been completed.

- When the individual or their representative/attorney mails, emails, faxes or hand delivers a hearing request directly to you:
  - Receive the hearing request and date stamp it with the date it was received in your office. Then send it to ODDS.

Your Role in Administrative Hearings, con't

- After the hearing request is completed, make them a copy. Make sure they get a copy.
- Then send the 0443 form and any additional documentation they've provided you to ODDS by:
  - Fax 503-373-7274
  - Email the ODDS Complaints email box
- Late hearing requests (being requested more than 90 days after the date of the notice) are to be sent using the above methods as well.

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 that services remain unchanged during the hearing process.
- To receive continuing services, DHS must receive the individual's written or verbal request for a hearing by the effective date of the NOPA.
- If the individual's services were terminated, the individual may have services reinstated if DHS receives the request within 10 business days of the effective date of the NOPA.
- If these deadlines are missed, the individual may still request continuing services. They will need to submit their request and DHS will determine if there is good cause for the late request.

What are Continuing Services?

- If the individual receives continuing services after the effective date of the NOPA and then loses the hearing, the individual may be required to pay for the services they received between the effective date of the NOPA and the hearing decision.
- If a hearing is requested after the Effective Date of the NOPA, the individual may not be eligible for continuing services – Department has option to provide continuing services or deny
  - Services may already have ended and would have to be reinstated
  - If individual was in residential services, leaves and later requests continuing services, may not have the same placement option.
- Individual can change their choice of continuing services at any time during the hearing process.

Questions?

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

- OAR 411-318-0025(5) 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.

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

- OAR 411-318-0005(25) "Representative“ means any adult, such as a parent, family member, guardian, legal representative, advocate, or other person who is chosen by an individual or their legal representative
- The representative may not be an employee of the Department, CDDP or Support Services Brokerage acting in official capacity.
- An individual or the legal representative for the individual is not required to choose a representative.

SPD-IM-11-051 Contested Cases for Children in DHS Custody

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

Questions?

Hearings Representatives

- Once the Hearing Request is sent to the APD Hearings Unit and assigned to a Hearing Representative, the Hearing Representative becomes the main point of contact of the case for the individual/representative/attorney.
  - At this point you should not be communicating with them about the hearing case.
- SC/PA main point of contact on the case is the ODDS Policy Analyst.

Discovery Documentation

- ODDS will contact you to request the documentation for the hearing case. This needs to be sent to them within two business days.

- Additional information/documentation may be requested for the hearing case by ODDS and/or the Hearing Representative at any time.

Will I be asked to testify?

- For most cases, ODDS assigns a policy analyst to testify.

- If the Hearing Representative determines you have information that would be beneficial to the case, you may be asked to testify.

Dismissing Hearing Requests

- Only a Department Hearing Representative can dismiss a hearing request.
- If a hearing request has been completed and then either the individual/representative/attorney decides not to move forward with the hearing request or if the issue is resolved, the SC/PA or the individual/representative/attorney must communicate the resolution to the Department Hearing Representative.
- The Hearing Representative will issue an Order of Dismissal/Withdrawal to all parties.

Claimant withdraws

- Order of Dismissal/Withdrawal
  - Issued by the Department Hearing Representative
  - The decision identified within the NOPA stands and the action must be taken on the date identified within the Effective Date of the NOPA.
  - If the Effective Date of the NOPA has already passed, the action is taken immediately and there may be an overpayment owed by the individual.
  - Hearing Representative will refer any overpayments to the Office of Payment Accuracy and Recovery Unit (OPAR) and include ODDS central staff in the referral.

Department withdraws

- Department Hearing Representative issues Order of Dismissal/ Withdrawal.
- If the Department withdraws the NOPA, it is typically because there is a lack of evidence supporting the decision, there is inaccurate or additional information needed, or additional information has been submitted that changes the determination.
  - If the Department withdraws the NOPA, then services may resume or additional information may be needed before eligibility for the service can be determined.
  - No overpayment

Hearings

- If the case goes to a hearing:
  - All hearings are done over the phone
    - ADA accommodations can be provided, such as in person hearings, approved by the ALJ
  - Claimant/representative/attorney no shows after 15 minutes into the hearing = Department’s Notice becomes the final decision

Final Orders

- 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.
    - Ask the CDDP/Brokerage to save a copy to claimant's file and notify everyone when this is completed.
    - Overpayment has been referred to OPAR
    - Reopen services
    - Close services
    - Case specific
  - To close the case, the Hearing Representative must receive notification all actions have been completed.

Questions?