

**DEPARTMENT OF HUMAN SERVICES  
AGING AND PEOPLE WITH DISABILITIES  
DEVELOPMENTAL DISABILITIES  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 1**

**HEARINGS**

**411-001-0500 Lay Representation in Contested Case Hearings**  
*(Temporary Effective 10/5/2012 – 4/3/2013)*

(1) Subject to the approval of the Attorney General, an officer or employee of the Department of Human Services (Department) is authorized to appear on behalf of the Department in the following types of hearings conducted by the Office of Administrative Hearings:

(a) Eligibility for services available through a waiver or state plan administered by the Department's Aging and People with Disabilities (APD) or Developmental Disabilities (DD) Divisions, including but not limited to the level or amount of benefits, and effective date;

(b) Eligibility for medical benefits, the level and amount of benefits, and effective date;

(c) Client overpayments related to waived service benefits or medical benefits;

(d) Suspension, reduction, or denial of medical assistance services, prior authorizations, or medical management decisions; and

(e) Client-employed provider matters, including but not limited to provider enrollment or denial of enrollment, overpayment determinations, audits, and sanctions.

(2) A Department officer or employee acting as the Department's representative may not make legal argument on behalf of the Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present

argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) A Department representative appearing under section (1) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

(6) When a Department officer or employee represents the Department in a contested case, requests for admission and written interrogatories are not permitted.

(7) The Department may not provide the telephone number and addresses of a witness if the Department has reasonable concern that the release of information may affect the safety of the witness.

(8) The Department's contested case hearings governed by the rules in OAR chapter 411, division 001 are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the party's consent unless confidential information of another person may be presented during the hearing and that person has not consented to the disclosure of confidential information.

Stat. Auth: ORS 409.050

Stats Implemented: ORS 183.452