

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

**CHAPTER 411
DIVISION 1**

CONTESTED CASE HEARINGS

411-001-0500 Contested Case Hearings

(Amended 4/2/2013)

(1) OAR 411-001-0500, 411-001-0510, and 411-001-0520 apply to all contested case hearing requests authorized under OAR chapter 411, except to the extent that --

(a) There is another conflicting rule in OAR chapter 411 that applies to the hearing request; or

(b) There is a rule in OAR chapter 411 that applies a conflicting rule in OAR chapter 461, division 025 to the hearing request.

(2) The Department of Human Services (Department) conducts contested case hearings in accordance with the Attorney General's model rules in OAR chapter 137, division 003, except to the extent that Department rules are permitted to and provide for different procedures.

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

(4) The Department's contested case hearings based on hearing requests authorized in OAR chapter 411 are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of the parties and the Department, as well as applicable confidentiality laws.

(5) The Department has adopted the exceptions to the Attorney General's model rules set out in section (3) of this rule and OAR 411-001-0510(6) due

to caseload volume and because these model rule discovery procedures would unduly complicate or interfere with the hearing process.

Stat. Auth: ORS 409.050

Stats Implemented: ORS 409.010

411-001-0510 Lay Representation in Contested Case Hearings

(Temporary Effective 7/1/2013 - 12/28/2013)

(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), 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) Overpayments related to waived or state plan service benefits or medical benefits;

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

(e) Consumer-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) of this rule 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) The Department is subject to 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>. A Department representative appearing under section (1) of this rule must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings.

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

Stat. Auth: ORS 409.050

Stats Implemented: ORS 183.452 & 409.010

411-001-0520 Late Contested Case Hearing Requests

(Amended 6/1/2013)

(1) When the Department of Human Services (Department) receives a completed hearing request that is not filed within the timeframe required by the applicable rule in OAR chapter 411 but is filed no later than the deadlines set out in section (2) of this rule:

(a) The Department shall refer the hearing request to the Office of Administrative Hearings for a contested case hearing on the merits of the Department's action described in the notice when:

(A) The Department finds that the claimant and claimant's representative did not receive the notice and did not have actual knowledge of the notice; or

(B) The Department finds good cause that the claimant did not meet the timeframe required due to excusable mistake, surprise, excusable neglect (which may include neglect due to significant cognitive or health issues), circumstances beyond the claimant's control, reasonable reliance on the statement of a Department employee or an adverse provider relating to procedural requirements, or due to fraud, misrepresentation, or other misconduct of the Department or a party adverse to the claimant.

(b) The Department refers the request for a hearing to the Office of Administrative Hearings for a contested case proceeding to

determine whether the claimant is entitled to a hearing on the merits if there is a dispute between the claimant and the Department about either of the following paragraphs.

(A) The claimant or claimant's representative received the notice or had actual knowledge of the notice. At the hearing, the Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Department mailed or electronically mailed the notice to the correct address of the claimant or claimant's representative, as provided to the Department.

(B) The claimant has established good cause for a contested case hearing on the merits under paragraph (a)(B) of this section.

(c) The Department may only dismiss such a request for hearing as untimely without a referral to the Office of Administrative Hearings if the following requirements are met:

(A) The undisputed facts show that the claimant does not qualify for a hearing under this section; and

(B) The notice was served personally or by registered or certified mail.

(2) The Department shall consider whether a late hearing request meets the late request criteria set out in section (1) of this rule:

(a) When the hearing request is received up to 120 days after a notice became a final order by default if no provider is a party to the contested case.

(b) When the hearing request is received up to 60 days after a notice became a final order by default if at least one provider is a party to the contested case.

(3) Unless required otherwise by the Servicemembers Civil Relief Act, the Department may dismiss a request for hearing as untimely if the

Department receives a completed hearing request after the applicable deadline in section (2) of this rule.

Stat. Auth.: ORS 409.050 & 411.103

Stats. Implemented: ORS 409.010 & 411.103