

Topic:	Eligibility Administrative Hearings, Process, and Testimony
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Overview

Description: This Worker Guide provides guidance for the Oregon Department of Human Services (ODHS) Office of Developmental Disabilities Services (ODDS) Administrative Hearing procedures, policy, and guidance for eligibility hearings.

Purpose/Rationale: ODDS hearings involve inter-agency procedures between ODDS, Aging and People with Disabilities (APD) Hearings Unit and the Office of Administrative Hearings (OAH). This guide establishes consistent protocols to assure ODDS staff and representatives actions follow expectations of fair hearing rights, responsibilities, and due process.

Applicability: This guide applies to ODDS Department Staff and Program Staff identified as Community Developmental Disabilities Program (CDDP) staff, and Eligibility Specialists (ES) who may be involved with an Administrative Hearing Request.

Procedures that Apply

Hearing Rights

When an individual receives a denial, reduction, suspension or termination of services or eligibility, they may request a hearing as outlined in [OAR 411-318-0025](#) and [ORS Chapter 183](#), regardless of receipt of a Notice of Planned Action, [Form 0947](#) (NOPA).

A NOPA must be provided to an applicant or their legal representative in accordance with OAR 411-320-0080 when the CDDP determines that the applicant does not meet the ODDS Intellectual and/or Developmental Disabilities eligibility criteria following a completed application or redetermination of eligibility.

Per 411-320-0080 an applicant or their representative has a right to request a hearing of the case before an administrative law judge within the Office of Administrative Hearings. Once a hearing has been requested, the individual is identified by ODHS as a claimant; throughout this document references to claimant mean the individual applicant, and include their representative.

Timelines

Timelines are critical to hearing rights and many listed here are established by OAR's. It is critical that CDDPs closely follow timelines and actions related to them as explained here:

- **Requesting a Hearing** – a verbal or written request disputing a decision must be received **within 90 calendar days** of a NOPA Notice Date; the date of the request is considered the hearing request date.
 - **Hearing Requests Received after 90 days** – always accept a hearing request and submit it to ODHS. The hearing representative must process the request, a decision will be made regarding if there is good cause for late filing and issue a notice.
- **Submitting an ODDS Hearing Request Form** ([SDS 0443dd\(2/2015\)](#)) – the hearing request form and Notification of Planned Action must be sent to the ODDS Complaints inbox at ODDS.Complaints@odhsoha.oregon.gov within **3 business days** of receiving a written or verbal request for hearing.
 - **Verbal Hearing Requests** – within 3 business days of receiving a verbal hearing request, the CDDP must complete and submit the 0443dd form to ODDS
- **Continuation of Services** – requests to continue the same level of services must be made within **10 business days** following the NOPA

Effective Date for a termination, reduction, or suspension when a timely Hearing Request is made. The Department Hearing Representative determines eligibility for Continuation of Services and issues a determination of approval or denial.

- **Notification of Hearing Request** – ODDS will notify the CDDP Eligibility Specialist, program manager and APD Hearing Unit of a hearing request. ODDS will request specific records to be returned by the CDDP within **3 business days**.
- **Submission of Records to ODDS** – within **3 business days** of request for records, all requested records for a hearing should be sent to ODDS.
- **Department Hearing Representative Assignment** – After ODDS receipt of a hearing request an ODHS Hearing Representative is assigned. The Hearing Representative will communicate to the CDDP Eligibility Specialist regarding scheduling times to discuss the case.
- **Informal Conference** – typically occurs within **21 days** of the hearing request. These are scheduled by the Hearing Representative.
- **OAH Hearing Referral** – The Hearing Representative must refer cases to OAH within **21 days** of the 0443dd date of request.
- **Hearing Assignment/Scheduling** – within **30 days** of the referral date an Administrative Law Judge (ALJ) is assigned and a hearing date scheduled; OAH issues a Notification of Scheduled Hearing to the Hearing Representative and the Claimant and/or their Representative. The Hearing Representative will forward the scheduled hearing through Outlook calendar appointments.
- **Hearing Exhibit List** – issued within a **week prior** to a scheduled hearing date.
- **Final Order** – A written order is issued typically within **90 days** of the date the hearing was requested; these orders have instructions on further appeals.
- **Re-Hearing or Reconsideration Request of Final Order** – A Re-Hearing Request may be filed with OAH within **90 days** of the Final Order. You may also receive a Reconsideration Request; Immediately contact ODDS Complaints and the Hearing Representative if these requests are sent to the CDDP and forward all related documents and communications about the request.

Pre-Hearing Processes and Standard Procedures

For most eligibility hearing requests, the below sequential procedures are followed.

Prior to the Hearing:

1. **Hearing Request** - An individual or their representative requests a hearing on a determination and completes the 0433dd, or the CDDP staff may assist with completion of the form. The person who requests the hearing is typically referred to as the Claimant
 - a. When staff are assisting with completion of the 0443dd, the staff name should be listed in the signature section as "Your Name on behalf of" followed by the claimant's name.
2. **Hearing Form Submission** - If the CDDP receives a 0433dd, or assists in completing one for an individual, the form must be submitted to ODDS at: ODDS.Complaints@odhsoha.oregon.gov (only fax or mail if necessary, to locations listed on the 0433dd).
3. **Hearing Request Notifications** - Upon receipt of a 0433dd, ODDS staff:
 - a. Emails the CDDP program manager and Eligibility Specialist as the Department Staff/witness
 - b. Emails the APD Hearing Unit
 - c. Provides the "Hearing Helpful Hints" worksheet (attached/below) for staff reference on necessary actions
4. The APD Hearing Unit assigns a Department Hearing Representative
5. The CDDP submits the requested hearing documents/Field Discovery to ODDS
6. ODDS shares the documents/Field Discovery with the assigned Department Hearing Representative, and the ODDS subject matter expert if appropriate
7. The Department Hearing Unit reviews the 0443dd Request for Hearing for any Continuation Of Services (COS) or Expedited Hearing requests and sends any necessary notices
8. The Department Hearing Representative communicates with the CDDP to set up an informal conference with the claimant (and their representative, if any) and the Program Staff/CDDP witness (ES) and notifies all parties of the date, time, and call-in information
9. The Department Hearing Representative collaborates with the Program Staff for any hearing witness preparation.

10. If ODDS technical support is necessary for OAR or policy interpretation, the Department Hearing Representative will reach out to the ODDS subject matter expert (e.g., for eligibility, the Eligibility Policy Analyst/D&E Coordinator) prior to the informal conference
11. If ODDS has questions related to the determination, ODDS will consult with the CDDP ES and may provide a written interpretation of the corrective action and remediation to the CDDP and Department Hearing Representative. This may result in a reversal or rescinding of the NOPA and reopening eligibility

Continuation of Service (COS) Procedures

Only individuals who are having services reduced, suspended, or terminated may be eligible for continuation of services. Individuals being denied services will not have any services that would qualify for continuation of services.

When Continuation of Services is requested, the below actions by identified staff apply:

Department Hearing Representatives:

- Review Continuation of Services (COS; aka, Continuation of Benefits) requests for approval or denial.
- Issue a written notice of the COS decision to the Claimant and/or their Representative, the Department and Program Staff.

Program Staff (CDDP or ODDS):

- **COS Approvals:** Services must remain the same until a Final Order is issued by the Administrative Law Judge; the CDDP must reinstate services if they were already terminated, or not take action to terminate services, to maintain the same level of service. Only the Claimant and/or their Representative may choose to end COS prior to issuance of a Final Order.
- **eXPRS Entry on COS Approvals:** The CDDP Eligibility Specialist must enter the redetermination denial into eXPRS, and attach the NOPA
- **CDDP submits eXPRS Eligibility Extension Request to ODDS:** an eXPRS eligibility extension must be added with a 12-month extension and notes in eXPRS for Eligibility Hearing Request/COB approved

Informal Conference

Prior to a hearing, an Informal Conference is scheduled by the Department Hearing Representative. This is a voluntary opportunity for the Claimant to have

an informal discussion about the decision, available records used, review the hearing request and appeal reason, explain the decision notice and OAR's applied, and for the Claimant to discuss the CDDP's decision and any new information that may become available.

The Informal Conference typically involves:

- A phone conference call, set up by the Department Hearing Representative and written notification sent to the Department Representative and/or Program Staff, the Claimant and/or their Representative, and ODDS Complaints email box.
- Participants include: the Department Hearing Representative, the Department Representative and/or Program Staff if different, (the ES, and/or Eligibility Policy Analyst/D&E Coordinator); the Claimant and/or their representative. A representative may not be a CDDP staff as indicated in OAR 411-318-0005.
- Any Claimant or Representative questions, concerns and discussion, and consideration of any outstanding documents that were not received and may make a decisional difference.
- Supplemental resource and referrals to other programs or community services which may provide supports for unmet needs, such as Long-Term Care Services through the Behavioral Health System or Aging and People with Disabilities, Family Networks, or the Oregon Aging and Disability Resource Connection (ADRC).
- Information on next steps in the hearing process for the Claimant and/or their Representative.
- Outcome of Information Conference is for the case to either be Withdrawn (by Claimant or Department/CDDP) or to proceed to a hearing.

Hearing Withdrawals

In some circumstances a withdrawal from the hearing process may be appropriate, including but not limited to:

- New information that may make a decisional difference and the Department or Program staff should review and make a new determination.
- An administrative error is identified, and the Claimant was incorrectly denied/terminated based on the evidence and interpretation and application of OAR's.

- The Claimant and/or their Representative withdraw due to a better understanding of the documents and OAR application, or to obtain new information and reapply.

The withdrawal is communicated to the Hearings Representative assigned to the case, who will create and issue a Department Dismissal Order to the Claimant and/or their Representative, the Department and Program Staff.

If the withdrawal results in a reversal of the determination, the CDDP Eligibility Specialist will be guided about next steps. This may include issuance of a Notice of Eligibility Determination (5103) within 10 business days of the Dismissal Order (OAR 411-320-0080(13), to open the applicant into DD services. A withdrawal may also occur if ODDS determines that the CDDP based the denial on insufficient clinical information, the CDDP will then either schedule an administrative exam or complete any other eligibility activities deemed necessary to make an accurate eligibility decision.

- The applicant or the representative for the applicant chooses to withdraw the hearing request. This is usually made to the Hearings Unit Representative assigned to the case.

Hearing Preparation

Should the case proceed to a hearing, following the Department Hearing Representative referral to OAH, they will prepare the hearing exhibits and submit them to OAH, the Claimant and their Representative, the Program Staff and Department Representative if any.

The exhibit packet typically includes a summary of the findings of fact and the Departments position, and is called a Contested Case Notice or a Supplemental Notice and will include:

- A table of contents
- A narrative of the Department's position regarding the denial for services
- Applicable OAR's for definitions and determinations
- A witness list (Typically the only witness for the Department is the ES or D&E Coordinator)
- An Exhibits List from which the witness shall refer to when giving testimony at the hearing

- Exhibits which contain evidence to support the Department's decision, such as the NOPA and documents listed on the NOPA

The Department Hearing Representative may meet with witnesses to prepare for a hearing, review hearing documents, and identify questions. Staff should reference the Contested Case Notice, or Supplemental Notice, and Exhibit List, to prepare for testimony.

Hearing Testimony

The Department Hearing Representative will notify ODDS when a case may require OAR/policy testimony and request a file review. Some examples when the D&E Coordinator may provide hearing testimony are:

- OAR interpretation dispute
- Eligibility policy interpretation dispute
- D&E Consultation interpretation
- Conflicting records or opinions
- Other based on case situation

Record Review

- ODDS emails the CDDP Program Manager and/or the Eligibility Specialist of a hearing request and assignment.
- Staff should review the hearing file as soon as possible, and within 3 business days of receipt, and provide any corrections or clarifications to the Department Hearing Representative the same or next business day
- The Hearing file is provided to the CDDP, OAH, and the claimant and/or the claimants representative.

A Hearing file typically includes, but is not limited to:

- The Notice of Planned Action
- Request for Hearing (433dd)
- All documents listed in the NOPA
- Any documents that may be received by the Hearings Representative from the Claimant or Representative
- The Request for Eligibility Determination (0552)
- Progress Notes relating to eligibility from referral/redetermination to current date
- For redeterminations, the 5101 Notice of Redetermination and original determination notice and determination records
- If a previous denial was referenced or reviewed, the previous denial file and NOPA

- OHP 729 Administrative Examination Prior Authorization form, and all communications with the PhD, if an evaluation was ordered
- Copies of correspondence between the CDDP and Claimant and/or their representative

Post-Hearing

If the Claimant and/or their Representative do not appear at the hearing, the Department will issue a Dismissal Order, which includes appeal rights.

When a hearing occurs and the record closes, the OAH ALJ will issue a Final Order to the Department Hearing Representative and Claimant and/or their Representative. The Final Order should be issued within 90 days of the hearing request. This may take longer in some instances.

The Department Hearing Representative provides the Department and Program Staff with a copy of the Final Order for the file record. If a Proposed and Final Order is requested, the Final Order will be issued by the Department Hearing Representative. The Claimant has 20 days to submit exceptions or arguments on a Proposed and Final Order, after the timeline has passed the Final Order will be sent.

The CDDP must:

- Retain a copy of the Final Order in the Claimant's file;
- Respond to the Final Order email (reply all) to verify receipt and the action requested has been completed
- Follow guidance in communication from the Department Hearing Representative and/or ODDS
- For COS cases with an ALJ Final Order or Dismissal, the CDDP must:
 - ALJ Determination Upheld - Terminate eXPRS eligibility and all services without further notice, **no later than five (5) business days** from the date of the Final Order or Dismissal;
 - ALJ Determination Overturned – Continue services and all necessary actions;
 - The CDDP must update the eXPRS eligibility line in accordance with the Final Order, or contact ODDS D&E Coordinator for technical assistance
 - If services are provided through a Brokerage or Children's Intensive In-Home Services (CIIS), the CDDP must communicate the Final Order with those programs if they were not included in communications by the Hearing Representative.

Additional Resources

Refer to the ODDS Witness Preparation training materials provided by ODDS, and the [ODDS Staff Tools Page](#) for hearing resources.

Form(s) that apply:

ODDS Administrative Hearing Request [SDS 0443dd\(2/2015\)](#)

Notification of Planned Action [SDS 0947\(12/2014\)](#)

Notification of Eligibility Determination [SDS 5103\(12/13\)](#)

Administrative Examination/Report Authorization [OHP 0729\(2/18\)](#)

Definitions and Terminology:

[OAR 411-318-0005](#) Definitions: CDDP; Claimant; Complaint; Continuing Services; DD Administrative Hearing Request; Denial; Department Hearing Representative; Department Staff; Good Cause; Hearing; Informal Conference; Informal Discussion; Notification of Planned Action; OAH; Program Staff; Representative; Request for Service;

[OAR 411-317-0000](#) General Definitions and Acronyms for ODDS

[OAR 411-320-0020](#) CDDP Definitions

Continuation of Service: This is also known as Continuation of Benefits, or Aid Paid Pending

Program Staff: This is the Department Program (ODDS) staff, who will usually testify as a witness, or the Department Program designee – such as the CDDP Eligibility Specialist who will testify based on their decision.

Administrative Law Judge (ALJ): This is the Office of Administrative Hearings staff judge who hear Department contested case hearings and provide a third-party determination.

Reference(s):

[OAR 411-318](#) – Individual Rights, Complaints, NOPA, and Contested Case Hearings for DD Services

[OAR 411-320](#) Community Developmental Disabilities Programs

[OAR 137-003-0635](#) Department of Justice, Agency Hearings assigned to OAH

Contact(s):

Eligibility Technical Assistance: odds.de@dhsosha.state.or.us;

General Complaints/Hearing Info: odds.complaints@dhsosha.state.or.us