

# DHS ADMINISTRATIVE HEARINGS

## 1. INTRODUCTION

You have a right to request a hearing in many instances including an action to deny, reduce, change, close or suspend your grant or services. You can also ask for a hearing when the agency has not acted on a request in a timely fashion.

## 2. WHEN DO I ASK FOR A HEARING?

You have a right to a hearing any time you think your welfare, disability or SNAP (food stamps) worker:

1. Has wrongly *denied or closed* your money, medical coverage, child care or SNAP (food stamps) benefits; **or**
2. Has wrongly *reduced* your benefits or medical benefits; **or**
3. Has not given you the correct amount of SNAP, TANF or other benefits, **or**
4. Has *not acted* on your request for assistance. For example:
  - a. TANF, or Oregon Health Plan (OHP) within 45 days;
  - b. an application for SNAP benefits or JOBS Support Services payments, within 30 days;
  - c. emergency SNAP benefits within 7 days;
  - d. or has not acted upon your application for Temporary Assistance for Domestic Violence Survivors (TA-DVS) by the second working day after application; **or**

5. Is wrongly claiming that you have an overpayment.

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OAR 461-115-0190; 461-115-0210

## 3. WHAT IS AN ADMINISTRATIVE HEARING?

A hearing is your opportunity to present your side of the case to a neutral decision-maker called an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). They are independent of DHS offices. The ALJ will listen to you, listen to your witnesses and look at any documents you provide. The ALJ will also consider the evidence provided by the agency.

The hearing is recorded and all witnesses swear to tell the truth, but it is much less formal than court. Hearings are mostly held by telephone. You can participate in the hearing from your home. In some situations, a hearing may be in person and take place in a room at your local DHS office. The ALJ may appear in person or may be in Salem and participate by teleconference.

## 4. HOW DO I REQUEST A HEARING?

You can ask for a hearing by filling out **DHS Form 443 (Administrative Hearing Request)**, which you can get in the reception area of your branch office of the Department of Human Services (DHS) or Aging and Disability Services Office. If you cannot find the form, ask the receptionist to give you one. ***You do not have to get it from your worker.***

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**Public Benefits Hotline – 1-800-520-5292**

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[www.oregonlawhelp.org](http://www.oregonlawhelp.org)

The form is also available on the Internet. Go to [www.oregon.gov/DHS](http://www.oregon.gov/DHS). Click on "Find a Form" on the left side of the web page. Type in "443" for the number and click on "Search."

*After you fill out the hearing request form turn it in at your local DHS office. You should ask the receptionist for a receipt when you turn in this form at the branch office.*

You can represent yourself at the hearing. If you want to have an attorney represent you, or if you need legal advice, call the Public Benefits Hotline of Legal Aid and the Oregon Law Center, 1-800-520-5292.

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## 5. HOW SOON DO I ASK FOR A HEARING

*You must ask for a hearing within 45 days of the date on the Notice of Action.* This means a completed hearing request on the **DHS Form 443** must be received by the agency *within 45 days*. **For SNAP benefits, or for a TANF JOBS disqualification, you have 90 days to request a hearing**, but you should ask for a hearing as soon as possible.

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## 6. HOW DO I KEEP GETTING BENEFITS UNTIL MY HEARING DECISION?

When you receive a notice to cut off or reduce your benefits, ask for a hearing within *10 days* of the date the notice was mailed or prior to the date the action to cut off or reduce your benefits goes into effect (this is often the end of the month you receive benefits.) Be sure to save the envelope your notice came in so you can prove when the notice was mailed. In almost all cases

you have the right to keep getting the same amount of assistance or SNAP benefits until you receive the written hearing decision.

You will not be able to keep your benefits while you wait for a hearing if the notice to cut off your benefits came when you reapplied for benefits.

**NOTE:** *If you lose your hearing, any benefits you received during this time will be an overpayment that you will have to repay.*

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## 7. HOW SOON WILL I GET A HEARING?

Normally, a hearing will be scheduled in a few weeks to a few months from your request. If you are requesting a hearing about:

- Expedited SNAP benefits
- Temporary Assistance to Domestic Violence Survivors (TA-DVS)
- The denial of continued benefits while your hearing is pending
- The denial of a JOBS payment

you have a right to a fast hearing called an "**expedited hearing**." An "**expedited hearing**" must be scheduled within 5 working days of the date you turned in your hearing request.

The Administrative Law Judge (ALJ) must make a decision within 3 working days of the hearing for Temporary Assistance to Domestic Violence Survivors (TA-DVS,) continuation of benefits while your hearing is pending, and JOBS payment hearings.

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The Administrative Law Judge (ALJ) must make a decision within 9 working days for SNAP benefits

"Working days" are the days when DHS is open.

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*You may also get an expedited hearing if you have a medical or dental problem that cannot wait.*

OAR 410-141-0265

## **8. WHAT IS A PRE-HEARING CONFERENCE?**

A pre-hearing conference is an informal meeting with the DHS representative. It is an opportunity for you and DHS to attempt to resolve the case. The DHS representative will set the date. The Administrative Law Judge (ALJ – the person who will conduct the hearing and make the decision), does not attend the informal conference. The informal conference is a good opportunity to exchange information, to simplify issues, and identify important documents that the ALJ should consider. Cases are often settled at the informal conference.

When you go to an informal conference, *remember that anything you say can be used against you in a hearing.* It may be wise to obtain legal advice before you go to an informal conference. Call the Public Benefits Hotline of Legal Aid and the Oregon Law Center, 1-800-520-5292.

Sometimes you can get your problem resolved just by asking for a hearing. This makes your worker pay more attention to your case since the agency must be prepared to justify their action to the ALJ. ***Use your right to a hearing.*** If your problem gets fixed, DHS can get your hearing cancelled.

## **9. WHAT IF I NEED TO POSTPONE MY HEARING?**

- The ALJ may grant the postponement if, for reasons beyond your control, you or your representative cannot attend
- The ALJ may also allow a postponement if both you and the DHS representative agree to it

To ask for a postponement you must file a motion before the hearing date and send a copy of your motion to the DHS hearing representative. You can also call the OHA and ask to postpone the hearing.

Send the original motion to the Office of Administrative Hearings. The address is:

Office of Administrative Hearings  
P.O. Box 14020  
Salem, OR 97309

The telephone number of the Office of Administrative Hearings is (503) 947-1515. The FAX number is (503) 947-1503.

***NOTE: A scheduled hearing is not postponed unless the ALJ grants the request.***

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OAR 137-003-0630

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## 10. HOW DO I REPRESENT MYSELF?

While it often helps to have a representative go with you to a hearing, you may handle it yourself. Here are some tips to follow if you are going to present your own case:

1. Before the hearing
  - a. A “**Pre-hearing packet:**” will be sent to you from the DHS representative including documents and rules DHS will rely on at the hearing and a summary of what DHS will argue at the hearing. If you do not receive this packet before the hearing, call the DHS representative for a copy. *If you still haven't received it, be sure to tell the ALJ that you did not receive it before the hearing. **Read your hearing notice and pre-hearing packet carefully.***
  - b. Make a list of the things you want the ALJ to know about your case.
  - c. Decide whether you need **witnesses or written papers** to help you prove anything your worker does not agree with. If you do need witnesses, arrange to have them testify by phone at the hearing. It is *always* best if the witness can testify over the phone. If the witness can't come, ask them to write down what they would say in their own words and sign their statement. You may also have them sign their statement in front of a notary public, but it isn't required. Remember if the hearing is by phone your witness must be with you or call the telephone number that appears on your Notice of Hearing.
  - d. If DHS or someone else has **documents** that you need for your hearing, you can

ask them in writing to give you the documents. If they refuse, you can ask the ALJ in writing to order them to give you the documents. The ALJ may send a subpoena requiring them to give you the documents.

- e. Send documents you wish to present to the ALJ and the DHS representative **before the hearing**. This is especially important if your hearing will be by telephone.
  - f. Most hearings are held by telephone, but you can ask for a face-to-face hearing if you need it due to a disability that makes it difficult to use the telephone. If you have a disability that makes it more difficult to present your case by a telephone hearing, you should state that in your request to the ALJ.
2. What Happens at the Hearing
    - a. The Notice of Hearing will give you a phone number to call at the time of the hearing. Be sure to read the instructions carefully.
    - b. First, the ALJ will explain to you the hearing process and your rights.
    - c. Next the DHS representative will explain why the decision was made. The DHS representative may have witnesses testify at the hearing.
    - d. After they are finished, you can ask them any questions you think are important. Take notes of anything other witnesses say because once they are finished talking it will be your turn to question them.
    - e. After the DHS representative is finished and you have asked your questions, it will be your turn to tell your side of the story

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and have your witnesses tell what they know of your side of the story.

- f. In almost all cases, except Intentional Program Violation cases, you have the **burden of proof**. This means that you must show the ALJ that you qualify for the benefit or that your side of the story is correct.
- g. **Keep calm** so you can explain things clearly to the ALJ.
- h. You can ask the ALJ to help you bring out facts and information. This includes helping you to get medical proof (documentation) if you are unable to get it yourself or you've tried to obtain important documents and you have been unsuccessful. *It is best to ask the ALJ to help you with this well before the hearing so that you have the information you need by the time of the hearing.*
- i. If you don't understand something, ask the ALJ to explain it.
- j. Present facts and information about your case by (a) having your own witnesses testify, (b) giving written papers to the ALJ and branch representative before the hearing and (c) asking questions of the branch office witnesses. You can testify yourself, but it will be important also to have witnesses and papers to back you up, if possible.
- k. Go over the list that you made before the hearing to be sure you have not forgotten anything. **Take your time. It is your hearing.**
- l. **Remember** that the hearing decision will be based only on the evidence given at the hearing, so you must be sure to

present all important information to the ALJ. If you couldn't get all the information in time for the hearing, ask the ALJ if you can send it to him or her within two weeks. **Be sure to send it as promised.** This is called "leaving the record open".

- m. You will not get a decision at the end of the hearing.

For more information about DHS hearings, go to:

[http://www.oregon.gov/oah/Pages/DHS\\_Brochures.aspx](http://www.oregon.gov/oah/Pages/DHS_Brochures.aspx)

- 3. After the Hearing
  - a. The ALJ will make a decision and issue an order based upon the testimony and evidence given during the hearing.
  - b. You will be mailed a copy of the order.
  - c. The order will tell you whether the branch office acted correctly in applying the rules and regulations.
  - d. If you are right, the ALJ will order DHS to pay you the benefits wrongly denied or to take other action to correct their mistake. DHS must act on the order immediately.
  - e. How quickly you receive the order will depend on the benefits that are involved. For TANF and other benefits except SNAP benefits, it must be mailed within 90 days from the date you requested the hearing.
  - f. For SNAP benefits (other than Intentional Program Violation hearings), it must be mailed within 60 days of your request for a hearing.
  - g. For expedited hearings, including Temporary Assistance to Domestic

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Violence Survivors (TA-DVS), a final order must be issued within 3 working days.

- h. For expedited SNAP benefits, a final order shall be issued not less than the 9th working day after the hearing was requested.
- i. These time limits may be extended if you agree to it or if you request a postponement to get more evidence in the record.

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OAR 461-025-0315  
OAR 461-025-0375

#### 4. To Appeal

- a. If the ALJ rules against you and you still disagree, you may want to request a “Reconsideration” or “Rehearing” of the final order.
- b. You must make this request in writing within 60 days from the date of the final order.

- c. You request the reconsideration or rehearing by writing a letter to the agency explaining why the decision is wrong. In some cases, the petition for Reconsideration/Rehearing must be sent to the ALJ. *Your final order will explain the proper procedure.* You may send in additional written evidence with your request for reconsideration or rehearing.

OAR 137-003-0675

- d. Instead of requesting reconsideration, you may want to appeal the final order. This must be done in the Oregon Court of Appeals. It is a good idea to have an attorney. The appeal papers must be filed within 60 days of the date of the final order.

For more information, call the **Public Benefits Hotline (1-800-520-5292)** or your local Legal Aid office for possible advice or representation. Go to [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for a directory of legal aid programs.

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