

Policy Title:	Contested Case Hearings – Temporary OAR			
Policy Number:	I-A.5.2 413-010-0500 thru 0535	Version:		Effective Date: 8/12/09 thru 9/01/09

Approved By: *on file*

Date Approved:

Policy

Forms, etc.

References

Contact

History

Reference(s):

- HB 2127 (2009)
- OAR 137-003-0501 – 137-003-0700
- ORS 183.411 – 183.685, 411.095

Form(s) that apply:

- CF 344, Child Welfare Administrative Hearing Request

Rules:

413-010-0500

Contested Case Hearings

- (1) A claimant has the right to a contested case hearing under ORS 183 when the Department receives a timely and completed hearing request concerning the denial, reduction, or termination of payment of or for any of the following:
 - (a) The foster care base rate.
 - (b) Enhanced supervision.
 - (c) Personal care services.
 - (d) The cost of housing the child of a dependent minor.
 - (e) Title IV-E adoption assistance (OAR 413-130-0120).
 - (f) Denial of guardianship assistance.
- (2) When a payment to a foster parent or relative caregiver is a benefit to a child placed in

that home by the Department, the child is the claimant in the contested case. The foster parent or relative caregiver may act on behalf of that child under these rules (OAR 413-010-0500 to 413-010-0535), requesting a contested case hearing for the child.

- (3) These rules describe the policies that apply to contested cases about the issues described in section (1) of this rule.
 - (a) OAR 137-003-0501 to 137-003-0700 apply to these contested cases, except to the extent that rules in Chapter 413 are permitted to and provide otherwise.
 - (b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.
 - (c) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in these rules.
 - (d) These rules supercede any conflicting statements in Child Welfare Policy I-A.5.2.1, "Contested Case Hearings".
- (4) The Department has authorized its employees to represent the Department in these contested cases.
- (5) The Department may authorize an assistant attorney general to be its representative in these contested cases.
- (6) These contested cases are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of each party and the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0505

Hearing Requests

For a contested case covered by these rules (OAR 413-010-0500 to 413-010-0535):

- (1) A request for a hearing is complete when the Department's Administrative Hearing Request form is completed and signed by the claimant or the claimant's representative and is received by the Department.
- (2) To be timely, a completed hearing request must be received by the Department not later than 30 days following the mailing date of the notice.
- (3) In the event a request for a hearing is not timely, OAR 137-003-0528 applies except to the extent provided otherwise in section (4) of this rule.
- (4) If a contested case notice was sent by regular mail, and the claimant or claimant's representative indicates that neither the claimant nor claimant's representative received or had actual knowledge of the contested case notice:

- (a) The Department shall advise the claimant or claimant's representative of the right to request a hearing under subsection (b) of this section.
- (b) When the Department receives a hearing request that is not timely (see section (2) of this rule) no later than 60 days after the deadline under section (2) of this rule:
 - (A) If the Department finds that the claimant and claimant's representative did not receive the written notice and did not have actual knowledge of the notice, the Department refers the request for hearing to the Office of Administrative Hearings (OAH) for a contested case hearing on the merits of the Department's action described in the notice.
 - (B) When paragraph (A) of this subsection does not apply, the Department refers the request for hearing to the Office of Administrative Hearings for a contested case proceeding to determine whether the claimant or claimant's representative received the written notice or had actual knowledge of the notice. The Department must show that the claimant or claimant's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the claimant or claimant's representative.
- (5) In the event there is no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a decision on the question of whether there is a right to a contested case hearing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005, 2009 Or. Laws ch. 126

413-010-0510

Notice

When the Department denies, reduces, or terminates a payment covered by subsections (1)(a) to (1)(f) of OAR 413-010-0500:

- (1) The Department issues a written notice that --
 - (a) Specifies the date the notice is mailed.
 - (b) Except as provided in section (2) of this rule, specifies the action the Department intends to take and the effective date of the action.
 - (c) Specifies each reason for the action.
 - (d) Informs the client of the extent to which the client has a right to a hearing.
 - (e) Specifies the method and deadline for requesting a hearing.
 - (f) Informs the client of the right to representation, including legal counsel.

- (g) Cites the Oregon Administrative Rules that support the action.
- (2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department, the requirements in subsection (1)(b) of this rule are optional. Instead of specifying the action the Department intends to take and the effective date of the action, the notice may state all of the following:
 - (a) The general nature of the change.
 - (b) Examples of how the change affects a client's benefits.
 - (c) The month in which the change will take place.
- (3) A notice provided under this rule also must state the client's right, if any, to receive continuing benefits.
- (4) Department notices indicate that the Department designates its file, including materials added by the claimant, as the record upon default. The Department's notice becomes a final order if --
 - (a) The claimant does not request a timely hearing; or
 - (b) A hearing request is dismissed because the claimant withdraws it or misses the hearing.
- (5) When the Department terminates or reduces benefits or services under subsections (1)(a) to (1)(f) of OAR 413-010-0500, the Department must send the notice --
 - (a) At least 10 calendar days in advance of the effective date, except as provided in subsection (b) of this section.
 - (b) At least 30 days before the effective date of the action when the Department changes a benefit standard that results in the reduction, suspension or closure of a grant of public assistance; or at least 10 working days before the effective date of the action when the Department has fewer than 60 days before the effective date to implement a proposed change to a benefit standard that results in the reduction, suspension or closure of a grant of public assistance.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0515

Continuation of Benefits

- (1) When the Department terminates or reduces benefits or services under subsections (1)(a) to (1)(f) of OAR 413-010-0500, a claimant may receive continuing benefits to the extent provided in this rule while the contested case is pending until a final order is issued in the case. Continuing benefits are not available to maintain benefits or services at a level for which the only issues in the contested case hearing are issues of state or

federal law or policy or change in state or federal law or policy.

- (2) To be entitled to continuing benefits, the claimant must indicate that the claimant wants continuing benefits on the hearing request form received by the Department.
- (3) To the extent the Department's action is sustained by the hearing decision, a dismissal of the hearing request, or the withdrawal of a hearing request by the claimant, the Department may institute recovery procedures to recoup the cost of any continuing benefits to the extent they were furnished solely by reason of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0520

Informal Conference

- (1) The Department representative and the claimant or claimant's representative may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference also may be used to:
 - (a) Provide an opportunity for the Department and the claimant to settle the matter;
 - (b) Ensure the claimant understands the reason for the action that is the subject of the hearing request;
 - (c) Give the claimant an opportunity to review the documents that are the basis for that action;
 - (d) Inform the claimant of the rules that serve as the basis for the contested action;
 - (e) Give the claimant and the Department the chance to correct any misunderstanding of the facts;
 - (f) Determine if the claimant wishes to have any witness subpoenas issued; and
 - (g) Give the Department an opportunity to review its action.
- (2) The claimant may, at any time prior to the hearing date, request an additional conference with the Department representative.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0525

Burden of Proof

In any contested case covered by these rules (OAR 413-010-0500 to 413-010-0535), the claimant has the burden of proof.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0530

Withdrawals and Dismissals

- (1) Withdrawals.
 - (a) A claimant or claimant's representative may withdraw a request for a hearing orally or in writing at any time before a final order has been issued on the contested case.
 - (b) Following a withdrawal under subsection (a) of this section, the Department or the Office of Administrative Hearings sends an order confirming the withdrawal of a hearing request to the claimant's last known address. The claimant may cancel the withdrawal in writing if received by the Department representative up to the tenth work day following the date such an order is sent.
 - (c) At any time before a final order is served, the Department may provide to the claimant the relief sought and withdraw any pending referral from the Office of Administrative Hearings.
- (2) A hearing request is dismissed by order when the claimant or the claimant's representative does not appear at the time and place specified for the hearing.
 - (a) The dismissal by order is effective on the date the order is issued.
 - (b) The Department may reconsider and cancel the dismissal under OAR 137-003-0675 on request of the claimant on a timely showing that the claimant was unable to attend the hearing and unable to request a postponement for reasons beyond claimant's reasonable control. The Department may refer the reconsideration decision to the Office of Administrative Hearings.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0535

Proposed and Final Orders

- (1) When the Department refers a contested case under these rules (OAR 413-010-0500 to 413-010-0535) to the Office of Administrative Hearings, the Department indicates on the referral whether the Department is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or a final order.
- (2) When the Department authorizes either a proposed order or a proposed and final order:
 - (a) The claimant may file written exceptions and argument to be considered by the Assistant Director for Children, Adults, and Families Division or the Assistant Director's designee. The exceptions and argument must reach the Assistant Director not later than the tenth day after service of the proposed order.

- (b) If the claimant does not submit timely written exceptions or argument following a proposed and final order, the proposed and final order becomes a final order unless the Department has issued a revised order or notice of reconsideration not later than the tenth day after service of the proposed and final order.
- (3) A request by a claimant for reconsideration or rehearing must be filed with the person who signed the final order within the time limits of OAR 137-003-0675.
- (4) A final order is issued or the case otherwise resolved no later than 90 days following the receipt of the request for a hearing. Delay due to a postponement or continuance granted at the claimant's request are not counted in computing this time limit.
- (5) A final order is effective immediately upon being signed or as otherwise provided in the order.
- (6) A party dissatisfied with a final order may appeal directly to the Oregon Court of Appeals by filing a petition for review within 60 days of the service of the final order, pursuant to ORS Chapter 183.
- (7) The Department reserves the right to withdraw any final order issued by the Office of Administrative Hearings at any time permitted by law.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Contact(s):

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Policy History

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