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Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division Administrative Rules Chapter Number

Christina Hartman 500 Summer Street NE, E-10 (503) 945-6398
Salem, OR 97301-1074

Rules Coordinator Address Telephone

to become effective [January 1, 2012] through [June 29, 2012].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Hearings for Developmental Disability Services Eligibility Determination

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

411-320-0175

SUSPEND:

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Other Auth.:

Stats. Implemented: ORS 427.005, 427.007, & 430.610 to 430.670

RULE SUMMARY

The Department of Human Services (Department) is temporarily amending OAR 411-320-0175 to reflect recent policy and practice changes by the Department regarding when the Department shall delegate final order authority to the Office of Administrative Hearings (OAH).

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division

Administrative Rules Chapter Number

In the Matter of: **The temporary amendment of OAR 411-320-0175 relating to hearings for developmental disability services eligibility determination.**

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Hearings for Developmental Disability Services Eligibility Determination

Statutory Authority: **ORS 409.050, 410.070, & 430.640**

Other Authority:

Stats. Implemented: **ORS 427.005, 427.007, & 430.610 to 430.670**

Need for the Temporary Rule(s):

The Department needs to amend OAR 411-320-0175 to:

- **Update when OAH issues a final order in hearings challenging eligibility determinations for developmental disability services to reflect current Department policy and practices and facilitate the ability to adhere to Department policy and practice with regard to proposed or proposed and final orders.**
- **Properly inform and explain the process for filing exceptions, describe the timelines, and the process followed when a proposed or a proposed and final order is requested and received by the Department.**

Currently, final order authority is always delegated to OAH and the Department is required to revoke this delegation each time the Department desires to request a proposed order or proposed and final order.

This temporary rulemaking allows the Department to identify the type of order the Department desires when making a referral to OAH. This permits the Department to request a proposed order or proposed and final order without having to revoke delegation of final order authority.

The temporary rulemaking also allows the Department to properly inform and explain the process for filing exceptions, describe timelines, and describe process followed when a proposed order or a proposed and final order is requested and then received by the Department.

Documents Relied Upon, and where they are available:

OAR 461-025-0371

Available at: http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_461/461_025.html

Justification of Temporary Rule(s):

Failure to act promptly will result in serious prejudice to the general public, the Department and OAH, and individuals or their representatives who request hearings to contest eligibility determinations. Because OAR 411-320-0175 does not reflect current revised policy and practices of the Department, the individual, the individual's representative, and the public at large may be confused or feel misled and may lack sufficient information to adequately understand their rights. This rule is confusing and leads individuals or the individual's representative to believe that a final order will be received and does not discuss the process for filing exceptions or the Department's timelines for processing proposed order. The rule as written also increases the workload of the Department when referring a case to OAH because the Department must revoke final authority when the Department prefers a proposed order or a proposed and final order.

Waiting to implement these rulemaking changes after the full 49-day permanent rulemaking procedure will cause further workload issues for the Department, continue to provide confusing and inaccurate information to the claimant or the claimant's representative, and prevent the Department in providing clear guidelines for filing exceptions to orders.

The temporary rules will immediately provide clear expectations for the claimant and the claimant's representative and allow for transparency of Department actions related to the hearing and proposed orders, proposed and final orders, and final orders.

Signed Mary Lee Fay, Director, Office of Developmental Disability Services

December 29, 2011

Signature

Date

DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 320

COMMUNITY DEVELOPMENTAL DISABILITY PROGRAM

**411-320-0175 Hearings for Developmental Disability Services
Eligibility Determination**

(Temporary Effective 1/1/2012 – 6/29/2012)

~~The Department follows the Attorney General's Model Rules OAR 137-003-0501 to 137-003-0700 and ORS chapter 183 for the conduct of hearings in developmental disability eligibility determination.~~

(1) DEFINITIONS. As used in this rule:

~~(a) "Administrative Law Judge" means a professional hearing officer, employed by the Employment Division, Office of Administrative Hearings, who presides over hearings and issues a final order.~~

(ba) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(eb) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(ec) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(ed) "Representative" means any adult chosen by the claimant to represent them at the hearing.

(fe) A "Request for Hearing" is a written request by the claimant or the claimant's representative that the claimant wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant has the right to a hearing, as provided in ORS chapter 183, if the claimant disagrees with the Department's eligibility determination.

(a) The request for a hearing must be in writing on the DD Administrative Hearing Request (SDS 0443DD) and signed by the claimant or the claimant's representative. The signed request (SDS 0443DD) must be received by the Department within 45 days from the date of the Department's Notice of Eligibility Determination.

(b) Upon request by the claimant, the CDDP shall assist the claimant in completing the hearing request form.

(c) A late hearing request may be granted when the claimant or the claimant's representative has good cause.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) When an individual is determined to be no longer eligible following a redetermination of their eligibility, the individual has the right to request continuing services during the hearing process.

(b) The request for continuing services must be indicated by;

(A) Checking the appropriate box on the DD Administrative Hearing Request (SDS 0443DD); or

(B) Communicating directly with the local CDDP, support services brokerage, or the Department that services remain the same.

(c) To qualify for continuing services, the DD Administrative Hearing Request (SDS 0443DD) and request for continuing services, must be received by the effective date identified on the Notice of Eligibility Determination or by 10 days following the date of the notice, whichever is later.

(d) The Department shall determine if there is good cause following receipt of a late request for continuing services.

(e) If the hearing is not in the individual's favor, the individual may be required to pay back any benefits received during the hearing process.

(4) INFORMAL CONFERENCE.

(a) The Department representative and the claimant or the claimant's representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant to settle the matter;

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action;

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the contested action;

(E) Give the claimant or the claimant's representative and the Department the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review its action.

(b) The claimant or the claimant's representative may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's

discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(c) The Department may provide the claimant the relief sought at any time before the final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent their interests during a pre-hearing conference and hearing.

(b) ~~Division~~ Department employees are authorized to appear as a witness on behalf of the Department for hearings.

(c) Hearings are not open to the public and are closed to non-participants, except non-participants may attend subject to the claimant's consent.

(6) WITHDRAWAL OF HEARING. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings (OAH) receives it. The Department shall issue a final order confirming the withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 working days following the date the final order is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for reasons beyond the claimant's control.

(8) PROPOSED AND FINAL ORDERS.

~~(a) In a hearing, the administrative law judge is authorized to enter a final order on behalf of the Department without first issuing a~~

~~proposed order unless the Department has specifically revoked authority.~~

~~(b) A final order shall be issued in compliance with OAR 137-003-0665 or the case otherwise resolved no later than 90 days following the request for hearing.~~

~~(c) The final order is effective immediately upon being signed or as otherwise provided in the order.~~

~~(d) A petition by a claimant for reconsideration or rehearing must be filed with the entity who issued the final order.~~

(a) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(A) Whether the Department is authorizing a proposed order, a proposed and final order, or a final order; and

(B) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing is being referred for an expedited hearing.

(b) When the Department authorizes either a proposed order or a proposed and final order:

(A) The claimant or the claimant's representative may file written exceptions and written argument to be considered by the Department. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless subsection (1)(a)(B) of this rule applies.

(B) PROPOSED ORDERS. After OAH issues a proposed order, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.

(C) PROPOSED AND FINAL ORDERS. If the claimant or the claimant's representative does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the 21st day after issuance of the proposed and final order unless the Department has issued a revised order or has notified the claimant or the claimant's representative and OAH that the Department shall issue the final order. When the Department receives timely exceptions or argument, the Department shall issue the final order, unless the Department requests that OAH issue the final order in compliance with OAR 137-003-0655.

(c) If in a contested case hearing OAH is authorized to issue a final order on behalf of the Department, the Department may issue the final order in the case of default.

(d) A petition by a claimant or the claimant's representative for reconsideration or rehearing must be filed with the entity who signed the final order, unless stated otherwise on the final order.

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.670