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[*Abridged to omit non-Medicaid references and with an addendum, by James Dean, Colorado Legal Services*]

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Non- Lawyers' Guide to Administrative Hearings

Your case will be heard and decided by an administrative law judge at the Office of Administrative Courts (OAC). OAC is an independent agency within the executive branch of government and is not associated with any government agency that may be involved in your case.

OAC hears cases in many areas of law involving state government. The information provided here contains general information about how to represent yourself in a hearing. OAC provides this information to help you prepare for your hearing, but it is not a substitute for having an attorney. Not all cases are the same and your case may be different. It is **not** proper to talk to the judge or OAC staff about the facts of your case or to ask them for legal advice.

How Do I Get a Hearing? Human Service and Medicaid Cases

In human service and Medicaid cases you can file an appeal by sending a letter to the Clerk's Office describing the types of assistance you have been receiving or want to receive, the county department of human services you have been working with, the name of the person at the county department of human services you have been working with, and what happened to your assistance (for example, was assistance denied, was it terminated, has the amount of assistance changed, or is the county attempting to recover an overpayment). Be sure to include your name, address, telephone number and social security number. You should attach to this letter a copy of the notice you received from the agency.

Or, you can fill out a Request for State Hearing form. You can get this form from the Clerk's Office, or you can get a copy by clicking on the "forms" link on the "Clerk's Office" page of the OAC web site.

All contested case hearings are given a docket (identification) number. This will appear in the upper portion of all documents you receive from the Clerk's Office. You must use this number, your name, and current address for all correspondence or filings.

Remember: It is very important for you to read carefully the documents sent to you by the Agency (i.e., County Department of Human Services, State Department of Human Services or State Department of Health Care Policy and Financing). Those documents tell you the issues involved or the charges brought against you by the agency, what deadlines you must meet and what rights you have.

Is There a Way to Settle This Without a Hearing?

Cases often settle without going to hearing. Contact the other party or parties to see if you can work something out. The parties may discuss settlement, and settle a case, at any time.

OAC will also provide a judge (who is not the judge who will decide your case) to meet with the parties and help the parties reach a settlement. This meeting is called a mediation or a settlement conference. If you want to have a mediation or settlement conference, ask the other side if they would be willing to do so. If all parties want a meeting to try to settle the case, contact the Clerk's Office and a meeting will be set up. Even if the other side does not want to have a mediation or settlement conference, a judge may require one if you ask.

Settlement discussions or mediation do not put your case on hold. All deadlines in the case remain the same unless the judge changes them.

In **human services and Medicaid cases** contact the agency's attorney or your technician to determine if you can work something out. In lengthy or complex cases, OAC may require a settlement conference.

What Should I Know About Procedural Rules?

Depending on the type of case you have there may be special rules known as procedural rules that you will have to follow. You may see the procedural rules for your type of hearing by clicking on the "procedures" button on the home page of the OAC web site.

In **human services and Medicaid cases** the county department of human services must send you a letter five days before the hearing explaining why the

county department has taken the action in question (e.g., denying assistance, terminating assistance, reducing benefits or seeking to recover money).

What Do I Have to Prove?

In **human services cases** the agency must establish that you violated the laws, rules, or county policies and that the agency acted properly. This is also true in Medicaid cases if your existing benefits have been terminated. However, if you are not currently receiving Medicaid and your application for Medicaid has been denied, you will be required to prove that you are eligible for Medicaid.

What Kind of Evidence Will I Need for the Hearing?

You can bring witnesses to the hearing who know about the facts and issues involved in the case. If there are documents, such as letters, contracts, business records, or medical records that help prove your case, bring the original and at least three copies to the hearing. You may also bring photographs or other items that relate to your case that you want the judge to consider.

How Do I Get Records?

In **human services and Medicaid cases** you or your representative have the right to examine, at the agency's office, all papers and records which are to be used at your hearing. The agency may charge a nominal cost for copies of the documents. Call or write the agency and ask to see a copy of your file and any other documents or relevant evidence the agency has regarding your case.

How Do I Get A Witness to Come to the Hearing?

A witness can come voluntarily to the hearing; however, a subpoena protects your right to have that person testify if their testimony is relevant to your case. Contact the Clerk's Office well before the hearing to get a [subpoena](#) to require the witness to appear. You must arrange to pay required fees, including mileage, and have someone else serve the subpoenas at least 48 hours before the hearing, not counting weekends and holidays. If you subpoena doctors or other experts, you may have to pay for their time to testify at the hearing as well as their time to travel to the hearing.

Is It OK to Bring Letters Instead of Witnesses?

Generally, it is better to bring witnesses who can help present your side of the case and answer any questions raised. **Usually, a written statement by a witness who is not present at the hearing is not allowed, although written statements**

from doctors and other professionals usually are allowed, if relevant to the issue.

Remember: This hearing is your chance to tell the judge your side. It is important to have your witnesses present at the hearing to testify and to have all of your documents at the hearing.

If I Forget Something, Can I Send It To The Judge Later?

In a **human services or Medicaid case** if you could not get the evidence in time for the hearing, the judge may allow you to send it later. If the judge allows you to send in a document after the hearing, you must also send it to the agency, which will have a chance to respond. The judge will tell you when you have to send this additional evidence. However, even in human services and Medicaid cases, the judge may not allow you to submit any documents after the hearing is over. **Remember:** This hearing is your chance to present your side of the case to the judge. It is important to have all of your documents at the hearing.

What If I Need An Interpreter?

In **human services and Medicaid cases**, if you cannot understand or speak the English language, you can request the agency to get someone who understands and speaks both your language and the English language to help you at the hearing; or if you prefer, you may bring someone with you of your own choice to help.

If you need a sign-language interpreter, contact the clerk's office.

Will the Hearing Location Be Accessible to People With Disabilities?

Hearing locations are accessible to persons with disabilities; however, check in advance with the Clerk's Office to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, contact the Clerk's Office as soon as possible so arrangements can be made.

What If I Can't Be There On The Day Set For My Hearing?

If you cannot attend the hearing on the date and time shown, you must contact the Clerk's Office and the other side as soon as you know of the problem. You can ask the judge for a continuance (that is, for a new hearing date). You must show good cause to change a hearing date. The sooner you make your request, the more likely it will be granted. Good cause includes circumstances beyond your control, such as your illness, illness of another household member requiring

your presence, a household emergency, or the unavailability of an important witness on the day of hearing. The need for more time to get a lawyer or, in appropriate cases, a non-lawyer advisor, or to prepare for the hearing may also be considered good cause in some cases.

Are the Hearings and Records Confidential?

Some hearings and records are confidential and not open to the public. In **human services and Medicaid cases** the law protects the privacy of public assistance applicants and recipients and provides for confidentiality of records in child abuse or neglect cases. Except for parties and advisory witnesses, witnesses may be excluded from the hearing room except when testifying. Some other types of cases may also be closed to the public.

Your hearing will be recorded on a tape recorder or digitally, by computer. The tape or digital recording of the hearing is the official record of the hearing and the transcript, if any, must be made from that recording. A party may request a copy of the official recording at a nominal cost. The judge has the discretion whether to allow any other person to make a recording of any portion of the hearing. The taking, use, and distribution of any recording is subject to the confidentiality statutes.

What Will My Hearing Be Like?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. An attorney may represent the other side to your case. You may be represented by an attorney or you may appear on your own behalf. In some types of cases, a friend, relative, or non-attorney advisor may represent you. However, if the party involved in the case is not you personally but instead is an entity such as a partnership or corporation, attorney representation may be required.

It is up to you to decide whether you will hire an attorney. OAC cannot appoint one for you. You may choose to represent yourself, but an attorney may be better able to present your case.

A list of free or low cost legal services for indigent persons is included at the end of this Guide. The Colorado Bar Association keeps a list of attorneys who you may be able to consult for no charge. Additionally, the Office of Administrative Courts has compiled a list of [Free or Low Cost Legal Services for Indigent Persons](http://www.colorado.gov/dpa/oac/pdf/Legal%20Services2.pdf), at <http://www.colorado.gov/dpa/oac/pdf/Legal Services2.pdf>.

You should arrive at the place where your hearing will be held before your scheduled hearing so that you and any witnesses may be seated in the hearing room.

The hearing will be tape recorded or digitally recorded on a computer. This is important because the tape-recorded or digitally-recorded record—may be necessary if anyone wants to appeal the judge's decision.

In human services and Medicaid cases, if your hearing is by telephone you will be seated next to a speaker-telephone, and the judge will participate by telephone connection to the hearing room. If this is a face-to-face hearing, the judge will appear personally to conduct the hearing. If your hearing involves a human services matter and is scheduled to be by telephone, you may contact OAC to reschedule it as a face-to-face hearing. If your hearing involves Medicaid and is scheduled to be by telephone, you may have it rescheduled as a face-to-face hearing if you state a good reason for your request. The judge will record the hearing to preserve the record. The hearing will not be open to the public, but you may bring friends and relatives to your hearing if there is enough room. **In an intentional program violation hearing, the agency cannot call you as a witness during your case unless you give up your right to remain silent.**

When the hearing begins, each party may present an opening statement, which is a brief outline of the evidence they expect to present. The opening statement is not evidence, and neither side is required to make one.

Then, each side is allowed to call witnesses, who will take an oath to tell the truth. You may call witnesses to ask questions about the facts of your case and you may testify yourself.

A witness is questioned first by the party calling the witness (direct examination), then by the opposing party (cross-examination). Additional questioning by each side (redirect and re-cross) may also be permitted. Cross-examination and re-cross examination is the opportunity to ask questions of the witness; the cross-examiner will not be permitted to make statements. The judge may also ask questions.

Either side may offer papers, documents, or other materials as exhibits. Each side has the right to object to any of the exhibits that a party requests to be admitted into evidence or to object to any of the testimony offered by the other side. The judge will then decide whether or not to allow these exhibits or testimony into evidence.

If you testify, the judge may ask some questions. You also can make a statement. Then the other side will ask you questions (cross-examination). You then will have a chance to make another statement to respond to the questions asked by the other party.

After each side has presented its case, rebuttal witnesses may be called. Rebuttal witnesses may only testify to issues already brought up by the other side. Few hearings actually involve rebuttal witnesses.

After all testimony has been heard and the documents received, the judge may allow each side to make a closing argument. Closing arguments can only address facts brought out in testimony of the witnesses or in exhibits received into evidence. Closing argument is not a chance to testify and you may not mention things that were not received in evidence. Sometimes the judge may allow the parties to make a closing argument in writing after the hearing.

Before the hearing closes, you must submit all the evidence you want the judge to consider.

What If I Don't Go To The Hearing?

Depending on the type of hearing, if you fail to come to the hearing the case may be decided against you.

In **human services and Medicaid cases**, if you appealed from a denial, termination, recovery, or other adverse action relating to Colorado Works, food stamps, or other public assistance, and if you fail to appear either in person or by an attorney for the scheduled hearing, the judge will cancel the hearing and issue an order dismissing the case for failure to appear. You will have ten days to write to OAC to show "good cause" for your failure to appear. In the case of the denial of an application, the hearing will be cancelled and your appeal will be dismissed.

When Will I Get a Decision?

After the closing arguments have been presented, the hearing is concluded. Normally, the judge does not announce the decision on the date of the hearing, but mails a written decision to the parties at a later time.

In **human services and Medicaid cases** after the closing arguments have been presented, the hearing is concluded. The judge does not announce the decision on the date of the hearing. Except in lengthy or complex cases, the decision will be issued within 20 days after the date of the hearing. The agency, you, and your

attorney will receive a copy of the judge's written decision from the Office of Appeals at either the Department of Human Services or the Department of Health Care Policy and Financing.

Can I Appeal the Judge's Decision?

In a **human services or Medicaid case**, after the hearing the judge will issue a written Initial Decision. If you disagree with the decision, the final paragraph of the decision will tell you how you may appeal to the Office of Appeals, State Department of Human Services, or to the Office of Appeals, State Department of Health Care Policy and Financing.

[Addendum]

COMMON ISSUES YOU MAY RAISE AT YOUR APPEAL HEARING

A. ADEQUATE AND TIMELY NOTICE REQUIREMENTS.

Medicaid denials, reductions or terminations must be preceded by a written notice stating what action is being taken; the reasons for the intended action; the specific regulatory and/or statutory basis for the decision; an explanation of the right to request a hearing (when applicable); how to request such a hearing; that the individual may represent himself/herself or use legal counsel, a relative, a friend, or other spokesman at the hearing; and when benefits may be continued pending the hearing.¹

The notice must also be *timely*; that is, notice must be mailed at least 10 days before the effective date of the action.² Courts, including administrative courts, have generally been strict in enforcing both the adequate and timely requirements, at least in cases involving termination of benefits.³ “[A] notice of adverse action that does not substantially comply with the federal and state requirements cannot provide the basis for a deprivation of benefits.” *Weaver v. Colo. Dept. of Social Services*, 791 P.2d 1230, 1233 (Colo. App. 1990).

B. LIMITS ON SERVICES--MEDICAL NECESSITY

If a state opts to cover a given service, federal regulations require services to be provided in a reasonable amount, duration and scope, given the intent of the program, and cannot exclude services for a particular condition, unless the treatment is experimental.⁴ This

¹ §8.057.1. All citations to §8 are from 10 C.C.R. 2505-10. Also see 42 CFR 431.210.

² §8.057.2.A. In a few special circumstances the notice period may be shorter. §8.057.2.B. Nursing facility transfer or discharge notices generally must be 30 days in advance. §8.057.2.D.

³ See e.g. *Weaver v. Colo Dept of Social Services*, 791 P.2d 1230 (Colo. App. 1990).

⁴ 42 CFR 440.230(a)-(c)

has generally been interpreted to require the coverage of medically accepted and medically necessary services that fit within a covered area.⁵

In determining medical need, the treating physician has generally been considered the preferred source of evidence.⁶ Thus, testimony by a treating physician, even in written form, that the treatment is necessary and not experimental often wins the case. Testimony that the treatment is cost effective is often the icing on the cake.⁷

C. THE AGENCY MUST PROVE THAT THE RECIPIENT'S CIRCUMSTANCES HAVE IMPROVED BEFORE BENEFITS MAY BE TERMINATED

Courts have concluded that, “if an individual has once been determined to be eligible for social service benefits, due process prevents a termination of those benefits absent a demonstration of a change in circumstances or other good cause,” such as a change in the law.⁸ Colorado courts have applied this principle to Medicaid/HCBS cases.⁹ **The burden is on the agency to prove that there has been a significant improvement in the recipient’s physical/medical or functional circumstances since the last favorable assessment.** A letter from the person’s treating physician specifically addressing this issue, as well as testimony from persons in a position to know, can significantly bolster a recipient’s chances of winning on this issue.

⁵ *T.L. v. Colorado Department of Health Care Policy and Financing*, 42 P.3d 63 (Colo. App. 2001) *Ohlson v. Weil*, 953 P.2d 939 (Colo. App. 1997); *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995)

⁶ *Weaver v. Reagen*, 886 F.2d 194, 200 (8th Cir. 1989); *Pinneke v. Preisser*, 623 F.2d 546, 550 (8th Cir. 1980); *Preterm, Inc. v. Dukakis*, 591 F.2d 121 (1st Cir. 1979). The Colorado cases cited above generally rely on treating physicians opinions without comment.

⁷ See e.g. *Visser v. Taylor*, 756 F. Supp 501 (D. Kan 1990), cited with approval in *Hern, supra*.

⁸ *Weaver v. Colo Dept of Social Services*, 791 P.2d 1230, 1235 (Colo. App. 1990).

⁹ *Id.*