

Representing Yourself at a Fair Hearing

Introduction

If you don't agree with any decision, either verbal or written, made by the Department of Social and Health Services (DSHS), you have the right to appeal that decision by asking for a fair hearing. [WAC 388-02-0085](#). For example, whenever DSHS denies your application, reduces or stops any benefits, including cash, Basic Food (formerly Food Stamps), or medical assistance, says you are being sanctioned or claims you have an overpayment of benefits, you may ask for a fair hearing.

This publication tells you about

1. the deadline to request a fair hearing,
2. how to make the request,
3. how to prepare for your hearing, and
4. what to expect at your hearing and afterward.

If you have difficulty speaking or understanding English or you cannot communicate in spoken language, you have the right to a qualified and impartial interpreter at no cost to you. [WAC 388-02-0120](#). To ask for an interpreter, you can tell the Fair Hearing Coordinator at your local DSHS office or you can call the Office of Administrative Hearings (OAH) at (360) 664-8717 or 1-800-583-8271 to let them know that you need an interpreter. You have the right to receive notices regarding your hearing in your primary language. [WAC 388-02-0130](#). Also, if at any time during the hearing you feel the interpreter is not doing a good job, you can ask the Administrative Law Judge (ALJ) for another interpreter.

What is the deadline for requesting a fair hearing?

DSHS must give you a written notice if it plans to deny, reduce or terminate your benefits. [WAC 388-458-0002](#). The notice must tell you both what action DSHS is taking and what rule or rules DSHS is relying on.

◆ NOTE: You can request a fair hearing anytime within 90 days of the date of the notice.

If you are receiving benefits and request a fair hearing within 10 days of the date on the notice, or before the effective date of the proposed action, DSHS must continue your benefits until an ALJ has made a decision in your case. Also, if DSHS stops your benefits without giving you written notice, you may request a fair hearing to ask for continued benefits.

However, DSHS may stop your Basic Food benefits even though you have requested a hearing, if your Basic Food certification period has ended. [WAC 388-458-0040\(5\)\(c\)](#).

If DSHS is terminating or reducing your benefits, any continued assistance that you receive may become an overpayment, that is, a debt you owe to DSHS, if you lose the fair hearing. [WAC 388-458-0040\(6\)](#). However, you will not be liable to repay more than 60 days worth of continued assistance. [WAC 388-410-0001\(1\)\(b\)](#).

How do I request a fair hearing?

Written Request: You may ask for a fair hearing by writing to the Office of

Administrative Hearings, P.O. Box 42488, Olympia, WA 98504. [WAC 388-02-0100](#). If it is an emergency, you may ask to have your hearing held as soon as possible by calling the Office of Administrative Hearings (OAH) at (360) 664-8717 or 1-800-583-8271. This is called an “expedited” hearing. You may also request a fair hearing by contacting the Fair Hearing Coordinator in your local DSHS office.

Verbal Request: You may also ask for a fair hearing verbally by calling OAH or by telling the DSHS Fair Hearing Coordinator or other DSHS staff person that you want a fair hearing. DSHS may ask you to follow up by putting your request in writing.

After you request a fair hearing OAH will send you a "Notice of Hearing" which will tell you the time, date and location of your hearing. If the notice tells you that the hearing is to be held by telephone but you want to have your hearing in person, you can call OAH at the number listed on the notice to ask for an in-person hearing as soon as you get your notice. It is usually better to have an in-person hearing. You have the right to have your hearing held at your local DSHS Community Services Office.

How should I prepare for my fair hearing?

Make an appointment to meet with the DSHS Fair Hearing Coordinator (FHC). The FHC is not a lawyer but is the person who will represent DSHS at your hearing. Ask the FHC

1. to explain why DSHS is denying, reducing or stopping your benefits, or taking any other action against you;
2. to give you copies of all the rules DSHS is using to support its action;

3. to ask if DSHS will have any witnesses at your hearing and if so, ask who they will be and what they will be asked to testify about; and
4. to view and receive copies of documents from your electronic case file.

These documents may include not only letters and notices but also case notes, case narratives, medical reports and evaluations, cash and Basic Food computations, WorkFirst notes and documents, applications, eligibility reviews, etc. Finally, DSHS is required to give you a packet of all the documents they will be using, well before the hearing. If you do not receive that by a week before the hearing, you should feel free to phone the FHC about that problem. If you believe that DSHS gave you the packet too late for you to review and understand it, you can ask the ALJ to reschedule the hearing or take other action to be fair to you.

The FHC may write or call you to schedule a pre-hearing conference. [WAC 388-02-0175 et.seq.](#) You can meet in a pre-hearing conference with the FHC if you choose, but you are not required to. It is an opportunity to understand the issues better from both sides and to help you prepare for your hearing. You may be able to settle the matter. If not, you still have the right to have your hearing. Finally, the FHC is required to give you a packet that contains copies of all documents DSHS will submit as exhibits in your fair hearing.

What should I bring to the fair hearing?

It is helpful to bring a list of points you want to be sure to explain to the ALJ. You may bring any documents, pictures, or other papers to show the ALJ why you think that

DSHS is wrong. You may bring witnesses to testify on your behalf. You may also bring a friend or relative regardless of whether that person will be a witness testifying on your behalf or not. You may also bring a friend, relative, or other person to represent you at the hearing. Your representative does not have to be a lawyer. Most people represent themselves at their hearing.

What happens at the fair hearing? WAC 388-02-0375

Your hearing will be conducted by an ALJ who does **not** work for DSHS but works for a separate agency called the Office of Administrative Hearings (OAH). Hearings are held at the DSHS office and are less formal than legal proceedings in a courtroom. All the people present sit around a table. The ALJ will tape record what is said and will take notes.

At the beginning of the hearing the ALJ will explain that she or he is not an employee of DSHS, has never seen your file, and knows nothing about you or your case except what you wrote in your fair hearing request. The ALJ will explain that in deciding your case, s/he will consider only

1. documents that you and DSHS submit, and
2. all sworn testimony.

The ALJ will then swear in everyone who will testify. Following that, give your documents to the ALJ who will give them exhibit numbers.

Usually, the FHC talks next, tells the ALJ why DSHS believes it is correct, and explains the documents that are DSHS' exhibits. When the FHC is through, you can ask the FHC any questions you have about what s/he said. If the FHC has any witnesses, you can ask the witnesses

questions when they are through testifying. The ALJ may also have questions for the FHC and any witnesses, to clarify the facts.

Next it is your turn to tell your side of the story. *Remember that the ALJ knows nothing about you or your case before the hearing starts except what you stated in your fair hearing request.* You must tell the ALJ everything that you want her or him to know. You may refer to your notes and tell the ALJ exactly what happened from your perspective. When you are through, the FHC and the ALJ may ask you questions. Then you may ask your witness to testify. The FHC and ALJ may ask your witnesses questions also.

How you act at the hearing is very important because the ALJ sees you only this once and decides if you are credible. Here are some tips:

Be polite; don't interrupt the FHC, ALJ, or a witness.

- Look at the ALJ when you testify.
- Be firm about what you are saying, but don't yell.
- Don't roll your eyes or use other offensive gestures.
- Don't swear or use other language that is offensive.

What should I expect after my fair hearing?

The ALJ does **not** decide who wins at the end of your hearing but instead sends a written decision to you and to DSHS, roughly about one month after the hearing. The written decision of the ALJ will be called either an Initial Decision or a Final Order. There is an important difference between these two types of decisions, explained below.

Initial Decision: [WAC 388-02-0215\(4\)](#), - 0560 et. seq.

If you or DSHS disagree with the ALJ's Initial Decision, you have the right to appeal to a Review Judge who works for DSHS' Board of Appeals (BOA). The appeal is called a Petition for Review; instructions on how to petition for review and the deadline will be attached to the ALJ's Initial Decision.

This appeal is in writing only; you do not appear before the Review Judge. The Review Judge considers only the documents and testimony from your fair hearing. You cannot add any new facts or documents on appeal; this is why it is important to present all your evidence (documents and testimony) at your fair hearing. If you send a written appeal to the BOA, DSHS will have a chance to respond in writing to your appeal, and vice versa.

The Review Judge will send a written decision to you and to DSHS. This is called a Review Decision. If you disagree with the Review Decision, you have the right to file a Petition for Review of Administrative Decision to the Superior Court of your county or to the Superior Court of Thurston County. If your fair hearing was about public assistance, there is no fee for filing your Superior Court case. If you decide to

do this, it must be done within 30 days of the date of the Review Decision. If you are unable to find a lawyer to help you file your appeal to Superior Court, ask for our do-it-yourself packet How to Petition for Review from an Administrative Decision. It is available from our web site, www.washingtonlawhelp.org, from CLEAR at 1-888-201-1014, or from your local legal services office.

Final Order: [WAC 388-02-0215\(5\)](#), - 0605

If your fair hearing notice has a "B" in the docket number, then you will receive a Final Order. If you or DSHS disagree with the ALJ's Final Order, neither of you can appeal to the BOA but you both have the right to ask the ALJ to reconsider the decision s/he made. The decision on Reconsideration is the final agency decision. This means DSHS has to accept the decision and can not appeal it to a higher court. If you disagree with the Reconsideration decision, you can appeal to a higher court by filing a Petition for Review of Administrative Decision. You also have the right to skip the request for Reconsideration and appeal a Final Order to Superior Court with a Petition for Review of Administrative Decision. See paragraph above for how to file this appeal.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, August 2008.

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