



WESTERN CENTER ON LAW & POVERTY

Administrative Hearings: Preparing to Win

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Introductions

- Who is on the call?
 - Hearing Experience
 - Types of programs

Administrative Hearings: Presentation Overview

- Know the rules
- Review the file
- Gather documents
- Gather witnesses & statements
- Submit a brief
- Prepare your witnesses
- Be flexible
- Watch for hearsay
- Consider request for review and/or appeal

Administrative Hearings: What are they?



Administrative Hearings: key players

- Administrative Law Judge or Hearing Officer
- Agency representative
- Witnesses
- Record



Administrative Hearings: What are they?

- Informal
- Hearing officer or Administrative Law Judge presides over hearing
- How the hearing runs may vary according to
 - Agency rules
 - Hearing officer or ALJ preferences
- Hearing officer or ALJ:
 - Should be fair & impartial
 - Should not have been involved in the decision against your client
 - Should not have contact with the Agency about your client outside the hearing

Quiz:

3 questions about appeals

- Question 1

You forget to bring a document to an administrative hearing. The hearing officer decides against you. You file a writ of mandamus in California Superior Court to appeal the decision.

True or false: You can present the document to the court at trial.

- Question 2

You forget to bring a document to an administrative hearing. At the hearing, you remember the document, and you ask the Administrative Law Judge for more time to give the judge the document, the judge:

(a) must give you more time

(b) may give you more time

(c) must not give you more time

- Question 3

At hearing, the agency representative shows your client a document that you have never seen before. You followed the agency's procedures to get all information the agency will present at hearing. You object but agree that the ALJ can consider the document.

True or false: On appeal a court will ignore the document.

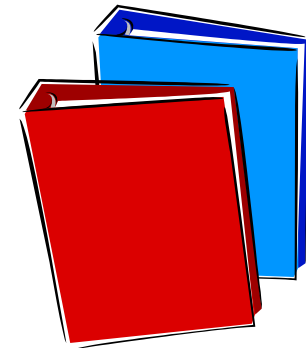
Preparing for the Hearing

- Interview your client
- Know the rules
- Review the file
- Prepare your evidence
 - Documents
 - Witnesses
- Prepare your brief



Preparing for the Hearing: Know the rules

- Check the agency's rules on procedure
 - CDSS Manual of Policies & Procedures
 - Housing Authority Agency Plan
 - Social Security regulations and POMS
- Follow the agency's rules to request
 - File
 - Position statement
 - Any documents the agency plans to rely on at hearing



Prepare for the hearing:

Review the file

- If the agency gives you a position statement, do you still need to review the file?

- YES!

- Why?



- There could be information in the file that would help or hurt your client, such as
 - Past problems or lack of past problems
 - Signs that your client tried to bring an issue to the agency's attention
 - Lack of evidence that the agency notified your client of a rule

Preparing for the Hearing: Review the file

- Right to access all non-privileged, non-confidential information
- Check the chronological notes, including electronic notes
- Look for all documents on the issue and related issues
- Get copies of what you need
 - *Tip:* bring your own post-its/paper clips



Preparing for the Hearing: Gather documents

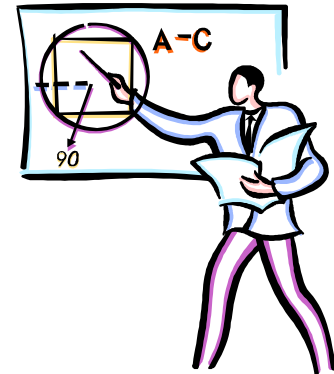
- From the file
- Other documents
 - (receipts, tickets, medical records, etc.)
- Relaxed evidence rules – hearsay is permitted but...
 - Use the most persuasive evidence available
 - Original or copy?
 - Authenticate the document (show that it is what it is...)
 - Live witness
 - Declaration

Preparing for the Hearing: Gather documents

- *Remember subpoenas*
- Documents & people

Preparing for the Hearing: Gather witnesses

- Who can support your client's story?
- If they cannot attend, consider alternatives
 - Arrange for telephone appearance
 - Get a declaration under penalty of perjury
 - Get a letter
- Do you need an interpreter?



Preparing for the hearing:

Write the brief

- A brief may not be required, but is a best practice
- Summarize why the agency is wrong and your client is right
- Give brief to the agency and ALJ two to three days in advance, or according to agency rules
- Give it to your supervisor in time to review & finalize
- Attach key documents as exhibits

Preparing for the hearing: Prepare your questions

- Prepare for direct examination of your witnesses
 - Ask open-ended questions [who, what, where]
 - Avoid “leading” (yes/no questions)
 - Lay foundation for key documents
 - Do you recognize? What is it? How do you recognize it?
- Prepare to cross examine agency witnesses
 - Ask closed, yes/no questions
 - Bring out key facts
 - Raise doubts about accuracy or credibility
 - If you don’t know the answer, don’t ask the question



Preparing for the hearing:

Prepare your witness

- What to expect at the hearing
- How to dress
- Respect for the judge & opposing side
- Review the subject matter you will ask about at the hearing
 - Do give guidance about what's important
 - Caution: too “rehearsed”

During the hearing

- Prepare to be flexible
 - Check the agency's rules
 - Prepare for a formal process: opening statement, agency presentation & cross-examination, client presentation & cross-examination, closing statement
- Make sure the agency allows enough time
 - Arrange in advance for interpreters, many witnesses, etc.
- Discuss with the ALJ the issues to be decided

Hearsay & strategy

- Agency's burden to stop benefits
- Hearsay (out-of-court statements) permitted but...
 - Evidence must be *substantial* (reliable)
 - Hearsay alone is not substantial
- *Strategy tip*
 - If agency's only evidence is insubstantial hearsay, agency has not met its burden
 - In that case, don't make the case for agency (for example, your client testifies but ALJ doesn't believe your client)
 - Discuss with your supervisor



Preserve your record for appeal

- Make sure your evidence becomes part of the record
- Make objections when needed
 - Hearsay
 - Previously undisclosed evidence
 - Unfair process
- Ask to leave the record open if needed
- Exhaust, exhaust, exhaust!

Written Decision

- Summarize evidence
- State rules relied on
- Explain reasoning
- Time limits to issue the decision?
- Is the decision final?
 - Automatically final
 - Adopted or “alternated” by agency director

If decision is not favorable, then what?

- Request reconsideration (check your agency's rules)
- Individual petition for writ of mandate – California Code of Civil Procedure §1094.5
 - 90 days in many cases
 - One year in some cases
 - Check the rules for your program
- Writ petition – agency policies or practices – California Code of Civil Procedure §1085

More information & resources

- Benchmark Institute Trial & Hearing Skills Training
Los Gatos, July 15-22, 2012
www.benchmarkinstitute.org
contact: marie@benchmarkinstitute.org
- WCLP Health & Welfare Task Force Meetings
June 27, 2012, Los Angeles
July 27, 2012, Fresno
September 28, 2012, San Mateo
Late October/early November 2012, Sacramento
- WCLP Health & Welfare Task Force Mailers
contact: adozier@wclp.org or shaffner@wclp.org

Thanks

... for information in this presentation ...

- Rosemary French, Benchmark Institute
- Jodie Berger, Legal Services of Northern California
- Antionette Dozier, Western Center on Law & Poverty
- Richard Rothschild, Western Center on Law & Poverty

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Questions?